

1339

IN THE

1339

**United States Circuit Court of Appeals
For the Ninth Circuit**

NAMPA & MERIDIAN IRRIGATION DISTRICT,

Appellant,

vs.

J. B. BOND, Project Manager of Boise Project
of the United States Reclamation Service,
Defendant,

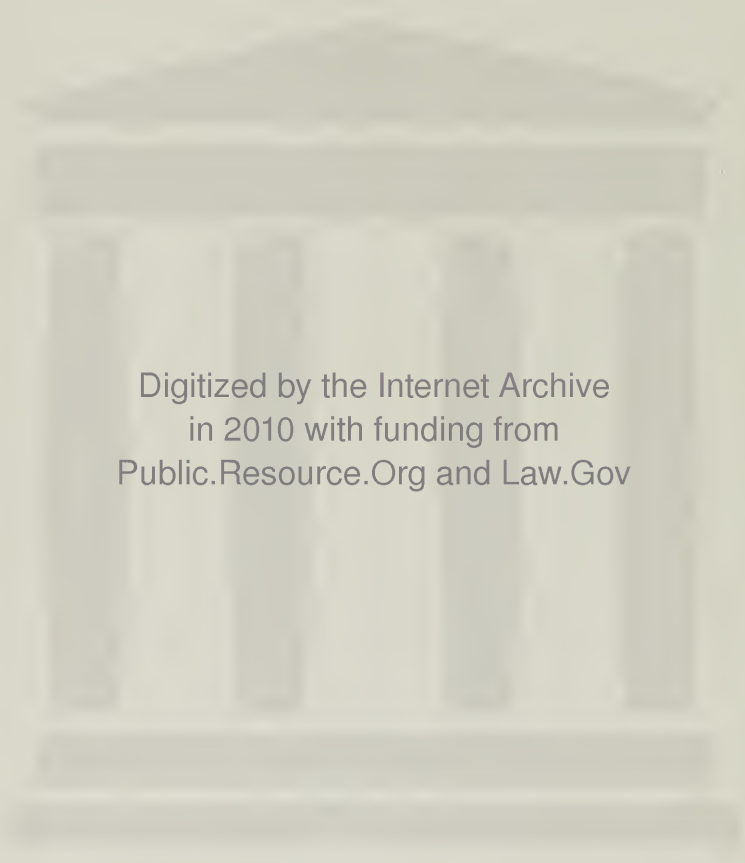
PAYETTE-BOISE WATER USERS' ASSOCIATION, Ltd.,

Intervenor.

Appellees.

Transcript of the Record

*Upon Appeal from the United States District Court
for the District of Idaho, Southern Division.*



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

NAMPA & MERIDIAN IRRIGATION DISTRICT,

Appellant,

vs.

J. B. BOND, Project Manager of Boise Project
of the United States Reclamation Service,
Defendant,

PAYETTE-BOISE WATER USERS' ASSOCIATION, Ltd.,

Intervenor.

Appellees.

Transcript of the Record

*Upon Appeal from the United States District Court
for the District of Idaho, Southern Division.*

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

HUGH E. McELROY,
Boise, Idaho,
Attorney for Appellant.

B. E. STOUTEMYER,
Boise, Idaho,
Attorney for Defendant and Appellee.

ELDRIDGE & MORGAN,
Boise, Idaho,
Attorneys for Intervenor and Appellee.

INDEX

	Page
Attorneys of Record	4
Assignment of Errors.....	91
Bond on Appeal.....	93
Bill of Complaint.....	5
Complaint in Intervention	98
Clerk's Certificate	122
Citation	120
Decree	89
Decision on Motion to Dismiss.....	79
Exhibit "A", Contract.....	16
Exhibit "B", Supplemental Contract.....	34
Exhibit "C", Public Notice.....	44
Exhibit "D", Decree (Payette-Boise Water Users' Assn. vs. J. B. Bond, et al., No. 640) ...	46
Exhibit "E", Supplemental Decree No. 640....	76
Exhibits to Complaint in Intervention.....	104
Motion, Re; Record on Appeal.....	95
Motion to Dismiss	78
Order Allowing Appeal.....	90
Petition for Appeal	90
Praeipie	118
Praeipie for Further Transcript Suggested by Intervenors	96
Statement of the Record.....	97

*In the District Court of the United States in and for
the District of Idaho, Southern Division.*

NAMPA & MERIDIAN IRRIGATION DIS-
TRICT,

Complainant,

vs.

J. B. BOND, Project Manager of Boise Project
of the United States Reclamation Service,
Defendant,

No. 983.

BILL OF COMPLAINT.

The Complainant alleges:

1. That the plaintiff is a corporation duly organized, existing and doing business under the laws of the State of Idaho relating to Irrigation Districts.

2. That the Defendant, J. B. Bond, is the duly appointed, authorized and acting Project Manager of what is known as the Boise Project of the United States Reclamation Service and as such has executive charge and control over the delivery of water from said Boise Project. That said Boise Project is an irrigation system constructed by the United States and situated chiefly in the Counties of Ada and Canyon in the State of Idaho.

3. That the said Plaintiff Irrigation District contains about 65,000 acres of irrigated land ly-

ing in Ada and Canyon Counties in Idaho, of which about 40,000 acres receives its entire water supply from that certain irrigation system constructed by the United States and known as the Government irrigation system of the Boise Project, and the remainder thereof is supplied mainly out of the old water rights of the District supplemented by a certain amount of stored water furnished by the United States out of the Arrowrock Reservoir of the said Boise Project as provided in that certain contract between the United States and the District hereinafter referred to.

4. That the said Forty Thousand (40,000) acres of land irrigated entirely with water from the Government irrigation system of the Boise Project is known and commonly referred to as the project lands of the District, and the lands irrigated mainly out of the old water rights of the District are commonly known and referred to as the old water right lands of the District.

5. That pursuant to the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388) known as the Reclamation Act, and acts of Congress supplementary thereto or amendatory thereof, the United States, acting through the Secretary of the Interior, has authorized and caused to be constructed that certain irrigation project located in the States of Idaho and Oregon known as the Boise Project. That the lands irrigated entirely with

water supplied from the irrigation works of the said Boise Project about four-fourteenths (4/14ths) are located in the Nampa & Meridian Irrigation District, and about ten-fourteenths (10/14ths) outside of the District.

6. That on or about June 1, 1915, the Defendant, Nampa & Meridian Irrigation District, entered into contract with the United States for the construction of a drainage system in the District, purchase of supplemental storage water rights from Arrowrock Reservoir for the old water right lands of the District, and full water rights for the project lands of the District, a copy of which contract is hereto attached, marked Exhibit "A" and made a part hereof, and thereafter entered into a supplemental contract with the United States, a copy of which is hereto attached, marked Exhibit "B", and made a part hereof.

7. That the said contracts were duly authorized by the electors of the District at elections held for that purpose, in the manner and in full compliance with the State Law and in like manner as in the case of a bond issue, and the said contracts and all proceedings in connection therewith were duly confirmed by decrees of the District Court in the manner provided in the State Statute. That the benefits of said contracts were duly apportioned by the directors of the District and the apportionment

thereof confirmed by the decrees of the District Court as provided in the State Statutes.

8. That Section 12 of the said contract of June 1, 1915, provided among other things:

“The project lands in the District shall pay the same operation and maintenance charge per acre as announced by the Secretary of the Interior for similar lands of the Boise Project and the same shall be collected by the District for the United States, and paid over by the District to the United States, and upon notice from the officer of the United States in charge of the Boise Project, the District will withhold the delivery of water from such project lands in the District as are in default in the payment of said operation and maintenance charge.”

9. That the drainage system provided for in the said contract between the United States and the Defendant, Nampa & Meridian Irrigation District, has been constructed by the United States.

10. That as a result of irrigation from the said irrigation system of the Boise Project the water table is rapidly rising under portions of the Boise Project outside of the Nampa & Meridian Irrigation District, particularly in the Golden Gate, Wilder, Arena and Deer Flat sections in the lower half of the project, and that in the opinion of the officials of the United States Reclamation Service it has become necessary to construct a drainage system in said portions of the project in order to

prevent the lands thereof from being ruined by seepage and alkali. That the Secretary of the Interior has caused to be made surveys and investigations of a proposed drainage system for said lands and has caused investigations to be made of the seepage and ground water conditions under said portions of the project, from which it appears that several thousand acres of land in said sections are in immediate danger from the ground water table which is now within five (5) feet of the surface and steadily rising, and that if drainage is not provided, said lands will suffer irreparable injury from seepage and water-logging.

That the Secretary of the Interior has approved the said proposed drainage system and has authorized the construction thereof as a part of the operation and maintenance work of the Boise Project with funds to be collected for that purpose from the water users as an operation and maintenance charge.

11. That for the purpose of providing the necessary funds for the construction of said drainage system as aforesaid the Secretary of the Interior on February 15, 1921, issued a public notice, copy of which is hereto attached and made a part hereof, and marked Exhibit "C".

12. That this Plaintiff has duly paid all operation and maintenance charges claimed by the Hon. Secretary of the Interior under Par. (a) of said

notice marked Exhibit "C", to this date, and that the payments so made by plaintiff to the United States fully re-imbursed the United States for all maintenance and operation expenses actually incurred on account of the Project lands of the United States within the Plaintiff District and constituted full payment of all operation and maintenance charges for which Plaintiff or the said Project Lands within the Plaintiff District were or are liable under the provisions of the said contracts between Plaintiff and the United States, referred to as Exhibits "A" and "B" unless it shall be held that under the terms of said contracts Plaintiff is liable for a pro rata part of the cost of construction of the drainage works referred to in Par. 10 hereof.

13. Plaintiff alleges that under Par. (b) of the said notice marked Exhibit "C", the Honorable Secretary of the Interior demanded of the Plaintiff on or about April 1, 1921, payment of 50 cents per irrigable acre for the said Project Lands within the Plaintiff District, for use by the said United States in constructing the said drainage works referred to in Par. 10 and 11 hereof, which payment Plaintiff has at all times refused to make on the ground that neither Plaintiff nor the Project Lands with the Plaintiff District were liable therefor under said contract; that the construction of said drainage works was not an operation or maintenance charge as contemplated in said contracts but was in

fact a construction charge for the benefit of lands outside the Plaintiff District, which the Secretary of the Interior had no jurisdiction to levy against Complainant and which Complainant had no jurisdiction to levy under the laws of Idaho against the lands within its boundaries; and that the cost of said proposed drainage works should be collected solely from the Project Lands outside of Complainant District under the certain contract, stipulation and judgment, hereinafter referred to as Exhibits

14. That on the.....day of....., 1921, there was a certain action pending in the above entitled Court wherein Payette-Boise Water Users' Association, Limited, a corporation, was Complainant, and J. B. Bond, C. C. Fisher, Charles F. Weinkauff (as the executive officers of Boise Project) Riverside Irrigation District, Pioneer Irrigation District and Nampa & Meridian Irrigation District were defendants.

That on said date a decree was entered in said action which settled and determined the issues therein as between the Complainant and the said defendants, J. B. Bond, C. C. Fisher and Charles F. Weinkauff, and which decree was based on the certain stipulation entered therein by the Complainant, Payette-Boise Water Users' Association, representing the water users from said Boise Project, whose lands were situated outside the

boundaries of the Nampa & Meridian Irrigation District and the Pioneer Irrigation District, and the Secretary of the Interior, and which stipulation is embodied in said decree as a part thereof. Complainant attaches hereto a copy of said decree as Exhibit "D", excepting therefrom the Exhibit "B" referred to in the stipulation in said decree, being entitled

That this Complainant and the said defendants therein, Pioneer Irrigation District and Riverside Irrigation District, were not parties to said stipulation nor did said decree determine any of the issues in said suit as between Complainant therein and this Complainant but that the issues in said action as between the Complainant therein and this Complainant were determined by the certain supplemental decree in said proceedings, entered therein on the, 1921, a copy of which is attached hereto as Exhibit "E".

That immediately upon the entry of said decree, the water users from Boise Project represented by the said Payette-Boise Water Users' Association, being the land owners of the Project outside of Complainant District, individually entered into the certain contract provided for in said decree and appearing therein as Exhibit "A" of the said stipulation, and thereby contracted and agreed that the Secretary of the Interior might build the said drainage works referred to in Par. 10 hereof and that

the landowner would pay the charges therefor provided in said contract.

Complainant alleges that none of the land owners receiving Project water within the Complainant District signed said contracts nor did said stipulation make provision therefor; neither has this complainant at any time consented to the same or been a party thereto.

That the Honorable Secretary of the Interior has no authority or jurisdiction to construct said works except under the said contracts of said individual land owners and with the payments made by them as provided therein.

15. Complainant alleges that no part of the said sum so demanded of Complainant by the Secretary of the Interior and for which Complainant has refused payment, has been or will be used for the maintenance or operation of the canals, reservoirs, drainage works, etc., designated in the said contracts between Complainant and the United States as the Boise Project; but that said sum is for use in the construction of new drainage works which were not contemplated or provided for in said contracts; and that Complainant has no authority or jurisdiction to incur said expense except in pursuance of a plan or contract therefor, duly approved by the vote of two-thirds of the electors of the district as provided by the laws of Idaho.

16. That Complainant has been advised by the defendant that unless said payments are made, defendant will be compelled and required to shut off the supply of water Complainant is entitled to receive from the Boise Project for the said Project lands within the boundaries of Complainant.

17. That defendant threatens and if not enjoined and restrained by the mandatory injunction of this Court will refuse to specifically perform said contract referred to herein as Exhibit "A" of this Complaint by delivering to Complainant the water supply from the Boise Project for use of Project Lands within the Complainant District as therein provided; and that the failure of defendant so to do will irreparably injure and damage this Complainant and the owners of the said lands.

18. That Complainant has no other speedy or adequate remedy in the premises.

WHEREFORE, Complainant prays that the Court adjudge and decree:

1. That neither Complainant nor any of the said Project Lands within its boundaries are liable for any part of the costs of said proposed drainage works.

2. That a mandatory writ of injunction issue requiring defendant to specifically perform said contract and deliver to Complainant the water supply therein provided for, and for such other and

further relief as to the Court shall seem meet and equitable.

HUGH E. McELROY,
Attorney for the Complainant.
Residence: Boise Idaho.

EXHIBIT "A"

Draft of July 24, 1914.

THIS AGREEMENT made this 1st day of June, 1915, between the UNITED STATES OF AMERICA, acting for this purpose by the Secretary of the Interior, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388) known as the Reclamation Act, and acts amendatory thereof or supplementary thereto, and the Act of Congress of February 21, 1911, (36 Stat. L. 925), the party of the first part, hereinafter called the United States, and the NAMPA & MERIDIAN IRRIGATION DISTRICT, an Irrigation District organized under the laws of the State of Idaho, and located in Canyon and Ada Counties, Idaho, acting for the purposes of this contract under authority of the Title 14 of the Idaho Revised Codes, including Sections 2396, 2397, 2398, the party of the second part, hereinafter called the District—

WITNESSETH—That,

WHEREAS, the District includes within its boundaries about Twenty-four Thousand Five Hundred Fifty-seven (24,557) acres of irrigated land,

Twenty-two Thousand Six Hundred Twelve (22,612) acres of which are entitled to receive water from the District; the remainder being irrigated with water from the Settlers' and New York Canals; and whereas, the District owns and controls that certain canal known as the Ridenbaugh Canal through which water is supplied from Boise River to the lands of the District for irrigation and domestic purposes, and whereas, the natural flow of Boise River which the District is entitled to divert under its priorities and appropriations, is insufficient during the latter part of said irrigation season to furnish a complete water supply for the lands of the District, and the District desires to secure a certain amount of stored water in order to furnish its land owners and water users a more complete water supply during the low water periods of the irrigation season, and

WHEREAS, the ground water table is rising in the District and in places is already close to the surface, so that a large part of the lands of the District are likely to become permanently ruined and incapable of producing crops, or bearing any share of the expense of the District, unless a drainage system is promptly provided; and whereas, it is believed that such a drainage system will reclaim considerable areas which cannot now be cultivated successfully on account of such seepage conditions, and will check the spread of such seepage

conditions, and save other large areas which are now threatened with destruction from the same cause; and

WHEREAS, the United States is now constructing, under the provisions of the Reclamation Act, that certain irrigation project known as the Boise Project, including the Arrowrock and Deer Flat storage reservoirs, and a portion of the lands of the District have been subscribed to said project by the individual owners of such lands; and

WHEREAS, it is believed that under existing conditions the only way in which the additional water supply and drainage system required by the District can be secured promptly and at a cost which the land owners of the District can afford to pay, is by means of a contract between the District and the United States, under the provisions of the Acts of Congress of June 17, 1902 (32 Stat. 388) and February 21, 1911 (36 Stat. L., 925) and Title 14 of the Idaho Revised Codes.

NOW, THEREFORE, it is hereby agreed—

1. That as a part of the general drainage system of its Boise Project, the United States will construct for the Nampa & Meridian Irrigation District, a drainage system to a total cost of Five Hundred Fifty-seven Thousand Dollars (\$557,000.00). The location of the drains, to be constructed, is shown on the map attached hereto and marked Exhibit "A", it being understood that in general

drains numbered "one" on the said map will be constructed first, drains numbered "two" will be constructed next, drains numbered "three" will be constructed last, so far as said limit of expenditure will allow such work to go, such drainage system to have sufficient capacity in its main drains to carry the seepage water flowing into the District from the lands lying above the District and draining into it, as well as that originating in the District itself. The Supervising Engineer in charge of such construction shall have the right to make changes in the alignment of the drains shown on the attached map, and in grades and cross-sections, where such changes shall be found in his judgment to be necessary or desirable to increase the efficiency or economy of the system. It is understood that in case any part of the work shown on the said map shall prove unnecessary for the benefit of District lands, such part may be omitted by mutual consent of the parties hereto. It is fully understood that the United States is to expend only Five Hundred Fifty-seven Thousand Dollars (\$557,000.00), including cost of preliminary work in drainage construction for the District, under this contract, and to stop when such limit of expenditure has been reached. It is not expected that the lands of the District can be completely drained at this cost nor a drainage system extended to each farm unit, but that only a number of principal

drains will be constructed with which individual and community farm drains can be connected.

2. That for the purposes of this contract, irrigable lands in the District which are now entitled to five-eighths of a miners' inch of water or more per acre, out of the present water rights of the District, or of the Settlers' District or through ownership of stock in the New York Canal Company, are considered as old water right lands and referred to herein under that name; irrigable lands in the District which have no water right from the District or the Settlers' District, and have not been irrigated through ownership of stock in the New York Canal Company, are considered as project lands and referred to herein under that name, and irrigable tracts of land in the District which are entitled to some water from the present water rights of the District, or of the Settlers' District or through ownership of stock in the New York Canal Company, but less than five-eighth of an inch per acre, shall be considered as old water right lands to the extent of the number of acres for which the water right of such tract will provide five-eighths of an inch per acre, and project lands as to the remainder thereof.

3. That the District will pay to the United States for that portion of the above described drainage work in the District, equity chargeable to the old water right lands in the District, the sum of

Two Hundred Sixty-six Thousand Dollars (\$266,000), in the same number of annual installments not less than ten (10) and same percentage of the total in each annual installment as is fixed by the Secretary of the Interior for the lands of the Boise Project in his Public Notice announcing the construction charge for the Boise Project, the first installment to be due and payable one (1) year after the day on which said Public Notice for the Boise Project is issued by the Secretary of the Interior, and one installment on the same day of each year thereafter until all installments are paid, and will use the taxing power of the District and all the powers and resources of the District to collect said sums of money and pay the same to the United States when due. The benefits of the expenditures of said sum of Two Hundred Sixty-six Thousand Dollars (\$266,000) for drainage shall be apportioned among the old water right lands of the District. No portion of said sum of Two Hundred Sixty-six Thousand Dollars (\$266,000) shall be apportioned to the project lands in the District but the balance of the said sum to be expended on drainage works in the District as provided in paragraph 1 hereof shall be charged to the general expense of the Boise Project and the project lands in the District shall pay the construction, operation and maintenance charges provided in paragraphs 11 and 12 hereof.

4. That after the construction thereof, the District will maintain said drainage system in good serviceable condition, at its own expense, and shall charge the cost thereof to the old water right lands in the District in the proportion which the amount of construction cost chargeable to the old water right lands in the District, to-wit, Two Hundred Sixty-six Thousand Dollars (\$266,000), bears to the total construction cost, to-wit, Five Hundred Fifty-seven Thousand Dollars (\$557,000), and will charge the balance to the United States. In case the District shall fail or neglect to maintain said drainage system in good serviceable condition, the United States may maintain or repair the same and charge the cost thereof to the District, which cost the District will promptly pay.

5. The right to water developed in the drainage system herein provided for shall belong to the Boise Project and the old water right lands of the District, and be divided between said Boise Project and said old water right lands of the District in the same proportion as the cost of the drainage system herein provided, and the drains to be constructed under this contract shall be subject to use by the lands of the Boise Project whether outside or inside the District, as well as the old water right lands of the District.

6. That the District will pay to the United States the sum of Twenty-four Thousand Eight

Hundred Forty Dollars for storage capacity in Arrowrock Reservoir—a reservoir to be constructed by the United States on Boise River in Boise and Elmore Counties, Idaho, and to have a capacity of between 200,000 and 250,000 acre feet—and the United States will provide for the District that portion of the total storage capacity of Arrowrock Reservoir which Twenty-four Thousand Eight Hundred Forty Dollars is of the total cost of said reservoir, and will deliver at the downstream end of the outlets of the Arrowrock Reservoir, for the District each year after the completion of said reservoir, the same proportion of the stored water available from said reservoir at such times after three (3) days' notice from the District to the United States officer in charge, and in such quantities as the District may direct not in excess of the District's proportionate part of the available outlet capacity. The total cost of said reservoir will be determined and stated by the Secretary of the Interior in his Public Notice of the charges to be made for the Boise Project, and to include all cost and expenses of whatsoever nature or kind for the purpose of, growing out of, in connection with, or resulting from the construction of said reservoir including engineering expenses and overhead charges, and such interest, if any, as may be payable on account of advances under the provisions of the Act of Congress of June 25, 1910 (36 Stat. L. 835), or other legislation by Congress.

7. The said sum of Twenty-four Thousand Eight Hundred Forty Dollars shall be paid by the District to the United States in the same number of annual installments not less than ten (10) and same percentage of the total in each annual installment as is fixed by the Secretary of the Interior for the lands of the Boise Project in his Public Notice announcing the construction charge for the Boise Project, the first installment to be due and payable one (1) year after the day on which said Public Notice for the Boise Project is issued by the Secretary of the Interior and one installment on the same day of each year thereafter until all installments are paid; and the District will use the taxing power of the District, and all the powers and resources of the District to collect said sums of money, and pay the same to the United States when due, and will also pay each year its proportionate share of the cost of operation and maintenance of said reservoir and delivery of water therefrom, as announced by the Secretary of the Interior.

8. No interest will be charged on any of the said installments for drainage work, or stored water, or money to be paid to the United States for operation and maintenance, on account of the drainage works or stored water, until due; but any part thereof which may remain unpaid after the same is due shall bear interest from maturity until paid at ten per cent (10%) per annum, and the

United States shall not be obliged to deliver or turn out for the District any stored water while the District is in default on any of the payments herein provided to be made by the District to the United States.

9. The District agrees to distribute the amount of water delivered to it by the United States under this contract in full compliance with the provisions of said Reclamation Act of June 17, 1902, and the rules and regulations thereunder, and to use and distribute the same only upon the lands within the District, and in compliance with the provisions of Section 2 of the Act of Congress of February 21, 1911 (36 Stat. L. 925) known as the Warren Act.

10. The stored water from Arrowrock Reservoir hereinabove agreed to be purchased by the District, shall be diverted from Boise River through the canal system of the District and delivered to old water right lands in the District to supplement the water supply of such lands at times when the natural flow of Boise River is insufficient, and the benefits and cost of such stored water shall be apportioned to such lands; Provided, however, that no portion of said stored water is to be delivered and no part of the cost thereof apportioned to those old water right lands of the District to which the first priority right of the District has been allotted under the classification of lands as to priority, which has been made by the District,

it being considered that the lands having the first priority need no stored water.

11. For the project lands in the District, the United States will provide both storage capacity in the reservoirs of the United States and carrying capacity in the United States Canal System of the Boise Project, and each year after the completion of the Arrowrock Reservoir, will deliver to the District for distribution to the Project lands in the District lying under the canal system of the District, as nearly as practical, the same proportionate share per acre of the water actually available from said works of the United States, both flood water and stored water, as is provided for similar lands in the United States Boise Project, outside of the District except as otherwise provided in paragraph 12 hereof, but no more, however, than is needed for beneficial use on said land, and for the project lands in the District lying above the canal system of the District a similar water supply for the project lands in the District will be furnished directly by the United States through the laterals and canals of the United States. The water supply for the project lands in the District shall be carried through the Main Canal of the United States Boise Project, and that portion for the project lands lying under the canal of the District delivered to the District at convenient points in the District where laterals or distributing canals from the Canal System of the

United States reach or cross the canal of the District, and will there be received by the District and distributed by the District to the project lands in the District entitled to the use thereof; under the provisions of a certain contract for the distribution of water, between the parties hereto, dated April 1, 1909, it being understood that the said certain contract shall remain in effect until such time as a new contract shall be mutually agreed upon by the parties hereto, providing for a different method of distribution of water and division of the cost of distribution.

12. The District will promptly apportion to the project lands in the District a total of Three Million Three Hundred Four Thousand Five Hundred (\$3,304,500) Dollars, being a charge of Seventy-five dollars (\$75.00) per acre as the benefits under this contract to said lands; provided, however, that if the building charge per acre announced by the Secretary of the Interior in his Public Notice for similar lands of the Boise Project, is less than Seventy-five dollars (\$75.00) per acre, then the assessment of benefits against the project lands in the District shall be reduced to the same amount per acre as is announced by the Secretary of the Interior for the similar lands of the Boise Project, and the District will collect the sums so apportioned to such project lands in the District and pay the same to the United States in the same number

of annual installments not less than ten (10) and same schedule of graduated payments as is fixed by the Secretary of the Interior in his Public Notices for similar lands of the Boise Project outside of the District. Provided, that should the construction charge per acre announced by the Secretary of the Interior, for the Boise Project for a full water right, be in excess of Seventy-five Dollars (\$75.00) per acre of irrigable lands, the benefits to be assessed to the project lands in the District under this contract from the said project lands for the payment to the United States of the construction charge, shall nevertheless be only Seventy-five Dollars (\$75.00) per acre, and the number of installments and the percentage of the total payable in each annual installment shall be the same number and percentage as for the lands of the Boise Project outside of the District, but in that event, the amount of both stored water and flood water furnished for such project lands in the District by the United States shall be the same proportion of the amount furnished per acre to the lands of the Boise Project outside of the District as Seventy-five Dollars (\$75.00) per acre is to the charge announced for the Boise Project lands outside of the District; Provided, that in that event, the owners of project lands in the District, individually or the District on behalf of all the project land owners in the District, may, if they or it so elect, by supplemental contract with the United States, secure

from the United States works additional water sufficient to make their water rights equal in amount per acre to the rights furnished by the United States to similar project lands outside of the District, by payment of the difference between Seventy-five Dollars (\$75.00) per acre and the charge announced by the Secretary of the Interior in his Public Notice for the lands of the Boise Project outside the District, but the amount to be apportioned to the project lands in the District under this present contract shall not be in excess of Seventy-five (\$75.00) Dollars per acre. The installments of the charges apportioned to the project lands in the District shall be due and payable from the District to the United States on the same dates as fixed by the Secretary of the Interior in his Public Notice for the payment of the charges for the lands of the Boise Project outside of the District. The District will be reimbursed by the United States for the cost of distributing the water to said project lands in the District by the payment to the District of the pro-rata share of the cost of operation and maintenance provided in the contract of April 1, 1909, between the District and the United States, until the expiration of said contract as provided in paragraph 11 hereof and thereafter under the new contract provided to be made in paragraph 11 hereof. The project lands in the District shall pay the same operation and maintenance charge per acre as announced by the Secretary of

the Interior for similar lands of the Boise Project and the same shall be collected by the District for the United States and paid over by the District to the United States, and upon notices from the officer of the United States in charge of the Boise Project, the District will withhold the delivery of water from such project lands in the District as are in default in the payment of said operation and maintenance charge.

13. It is fully understood that the old water right lands of the District shall not in any event be liable for any part of the charges herein agreed to be apportioned to and collected from the project lands, nor the project lands for any portion of the charges herein agreed to be apportioned to or collected from the old water right lands in the District, and the United States agrees to waive the right to hold either of said two classes of land for any part of the charges herein agreed to be apportioned to and paid by the other, but will look to the old water right lands for the old water right land charges and the project lands for the project land charges.

14. No interest will be charged on any of said installments for water to be supplied to said project lands in the District until due, but any part thereof which may remain unpaid after the same is due, shall bear interest from maturity until paid at ten (10%) per cent per annum, and the United

States shall not be obliged to deliver or turn out for the District any water for such project lands in the District as are in default on any of the payments herein provided to be made. Provided, the project lands in the District shall be subject to the same provisions as to residence, cultivation and limit of area as the lands of the Boise Project outside of the District.

15. The United States will assent to the release by the Payette-Boise Water Users' Association of such lands in the District as have been subscribed under stock subscription and contract to the said association, and have therefore become subject to the lien provided in such subscription and contract for the repayment of a proportionate part of the cost of the Payette-Boise Project from the lien and obligation of such stock subscription, and also release and cancel the contract under date of October 12, 1906, between the Nampa & Meridian Irrigation District, and the Payette-Boise Water Users' Association, providing for a credit to the subscribed lands of the District for existing works, as regards both the old water right lands and the project lands.

16. The Payette-Boise Water Users' Association agrees to join in the release of said stock subscription contracts and liens upon conditions above stated, and its name is subscribed hereto in evidence thereof.

17. Where any appropriations of water have been made and water rights acquired by parties other than the District out of any of the draws, sloughs or natural channels of the Nampa & Meridian Irrigation District, and such rights are interfered with by the deepening of such channels and the construction of the said drainage system in the District, it is understood that the money herein provided for the construction of drainage works shall be available for the satisfaction of any just claims for damages and of judgments, liabilities or obligations on account of, growing out of, or resulting from the interference with any such rights by the deepening of such channels and construction of such drainage system, and that the United States may pay such claims, judgments, liabilities and obligations out of said money. Any lateral construction which may be agreed upon between the District and the United States as being necessary to replace the rights of flow through natural drainage lines, may be built by the United States as a part of the drainage system herein contemplated.

IN WITNESS WHEREOF, the parties hereto have caused their names and seals to be attached the day and year first above written, the Nampa & Meridian Irrigation District, and the Payette-Boise Water Users' Association, acting in pursuance of resolutions of their Board of Directors, of

which certified copies are hereto attached and made a part hereof.

NAMPA & MERIDIAN IRRIGATION
DISTRICT,

(SEAL)

By H. B. Carpenter,
President.

ATTEST:

G. A. Remington,
Secretary.

PAYETTE-BOISE WATER USERS'
ASSOCIATION,

(SEAL)

By J. W. Brandt,

ATTEST:

W. L. Girard,
Secretary.

ANDRIEUS A. JONES,
*First Asst. Secretary of the Interior,
for and on behalf of the United
States.*

Sgd. Dec. 13, 1915.

EXHIBIT "B".

SUPPLEMENTAL CONTRACT

between the
NAMPA & MERIDIAN IRRIGATION DISTRICT
and the
UNITED STATES.

Draft of December 20, 1917.

THIS AGREEMENT, made this 5th day of November, 1918, between the UNITED STATES OF AMERICA, acting for this purpose through E. C. FINNEY, First Assistant Secretary of the Interior, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, and particularly Sections 2 and 3 of the Act of Congress of February 21, 1911 (36 Stat. 925), hereinafter referred to as the United States, and the NAMPA & MERIDIAN IRRIGATION DISTRICT, an irrigation district organized under the laws of the State of Idaho, hereinafter referred to as the District.

WITNESSETH, That:

1. WHEREAS, under that certain contract between the United States and the Nampa & Meridian Irrigation District, dated June 1, 1915, it is provided that as a part of the general drainage system of its Boise Project, the United States will construct for the Nampa & Meridian Irrigation District, a drainage system to a total cost of Five Hundred Fifty-seven Thousand (\$557,000) Dollars, and that the District will pay to the United States for that portion of the above described drainage work in the District equitably chargeable to the old water right lands in the District, the sum of Two Hundred Sixty-six Thousand (\$266,000) Dollars, and whereas, the drainage system contemplated under the provisions of said contract, and estimated to

cost approximately Five Hundred Fifty-seven Thousand Dollars, (\$557,000), has been constructed at a cost of approximately Three Hundred Forty Thousand Dollars (\$340,000), and whereas, it is not necessary to spend the balance of the said Five Hundred Fifty-seven Thousand Dollars (\$557,000), on the said drainage system, and whereas, neither the District nor the United States desires to spend any money unnecessarily on said work.

IT IS HEREBY AGREED that said drainage construction shall be terminated at a cost of not to exceed THREE HUNDRED FORTY THOUSAND DOLLARS (\$340,000), and the amount to be paid by the District to the United States for that portion of the said drainage works equitably chargeable to the old water right lands in the District shall be reduced in like proportion as the said cost of Three Hundred Forty Thousand Dollars (\$340,000) is less than the said estimated cost of Five Hundred Fifty-seven Thousand Dollars (\$557,000), namely to $266/557$ ths of Three Hundred Forty Thousand Dollars (\$340,000), or One Hundred Sixty-two Thousand Three Hundred Sixty-nine and Eighty-four hundredths Dollars, (\$162,369.84).

2. AND WHEREAS, said estimate of the actual cost of Three Hundred Forty Thousand Dollars (\$340,000) contains an allowance for certain items of contingent liability and expense which may

or may not have to be paid, and whereas, there is also some possibility of additional credits from the sale or transfer of equipment.

IT IS HEREBY AGREED that should the actual cost as finally determined be less than Three Hundred Forty Thousand Dollars (\$340,000), the Secretary of the Interior will furnish the District a statement of such actual cost and in that event the amount to be paid by the District to the United States for that portion of the said drainage works equitably chargeable to the old water right lands in the District, shall be reduced to 266/557ths of such actual cost so stated by the Secretary of the Interior.

3. AND WHEREAS, the said contract of June 1, 1915, provides for furnishing water rights for the project lands of the District at a charge of Seventy-five Dollars (\$75.00) per acre, with a proviso that if the building charge announced by the Secretary of the Interior in his Public Notice for similar lands of the Boise Project, is less than Seventy-five Dollars (\$75.00) per acre, then the assessment of benefits against the project lands in the District shall be reduced to the same amount per acre as is announced by the Secretary of the Interior for similar lands of the Boise Project, and whereas, the Secretary of the Interior, in his Public Notice of July 2, 1917, for the said Boise Project has announced a construction charge of Eighty

Dollars (\$80.00) per acre with a proviso that if within one year all the irrigable lands of the Boise Project are duly pledged to return the payment of the construction and operation and maintenance charges either through individual contracts, water users' association contracts, or through irrigation districts, duly organized and confirmed by judicial decree, then the said charge of Eighty Dollars (\$80.00) per acre will be reduced to Seventy Dollars (\$70.00) per acre, and further provides that if all of that portion of the project lying northeast of Indian Creek between the Nampa & Meridian Irrigation District and the New York Canal, is duly pledged to return the payment of the construction and operation and maintenance charges, then the said construction charge of Eighty Dollars (\$80.00) per irrigable acre for a full water right will be reduced to Seventy Dollars (\$70.00) per irrigable acre in said portion of the project, and whereas, the said portion of the Boise Project is the portion immediately adjoining the District, and whereas, the landowners of the District, through the organization of an irrigation district and the said contract between the District and the United States have already complied with all those provisions required of the said adjacent lands of the Boise Project as the conditions upon which the said Seventy Dollar (\$70.00) rate may be secured.

IT IS HEREBY AGREED and understood that the said rate of Seventy Dollars (\$70.00) per acre of irrigable land is the rate applicable to the said project lands of the Nampa & Meridian Irrigation District.

4. AND WHEREAS, the said contract between the District and the United States provides that the charges agreed to be paid by the District to the United States shall be payable in the same number of annual installments not less than ten (10) and same schedule of graduated payments as is fixed by the Secretary of the Interior in his Public Notice for similar lands of the Boise Project outside of the District, and whereas, under the provisions of the Act of Congress of August 13, 1914, known as the Reclamation Extension Act, and the Public Notice issued by the Secretary of the Interior under date of July 2, 1917, the charges for most of the lands of the Boise Project will be payable in twenty (20) annual installments upon the schedule of graduated payments set out in Section two of said Extension Act.

IT IS AGREED and understood by the parties hereto that the construction charges agreed to be paid by the District to the United States for drainage, storage rights and full water rights, shall be due and payable in twenty (20) annual installments upon the schedule of graduated payments set out in Section 2 of the said Extension Act, namely:

—The first four of such installments shall each be two per centum, the next two installments shall each be four per centum, and the next fourteen shall be each six per centum, of the total construction charge.

5. AND WHEREAS, in allotting water rights and apportioning benefits under the said contract of June 1, 1915, the District omitted to furnish any water rights to, or assess any benefits against, the dry lands within the corporate limits of the City of Nampa, and whereas there are about Two Thousand Five Hundred Ninety-five and Twenty-five hundredths (2,595.25) acres of dry lands within the said corporate limits, and whereas, the said lands are arid lands, incapable of producing agricultural crops without irrigation, but fertile and productive if irrigated and especially valuable for intensive farming purposes on account of their location, and whereas, there is no other available source of water supply for said lands except from the irrigation work constructed by the United States.

NOW, THEREFORE, it is hereby agreed that the District will purchase from the United States for said lands, and the United States will sell to the District for said lands, water rights from the irrigation works of the said Boise Project, and the District will pay the United States for said rights at the same rate per acre and will apportion bene-

fits to said lands at the same rate per acre as other project lands in the District and the water rights to be furnished for said lands to be of the same kind and furnished upon the same terms and conditions as those furnished to project lands of the District outside of the corporate limits, except that the District may deliver the water to the landowners at the corporate limits of the town of Nampa and shall not be required to distribute the water within the corporate limits, and that in the construction of the laterals for said lands the United States will not construct such laterals within the corporate limits of the City, except, where laterals of the same kind commonly built by the United States outside of the said corporate limits, can be built without any extra or unusual expense, the water to be distributed within the said corporate limits by the landowners themselves, or by such agency as they may select and provide for that purpose at their own expense, and all structures or special construction or maintenance required by the ordinances, regulations and police power of the City, shall be provided by the landowners of the City at their own expense.

6. AND WHEREAS, under the provisions of Section 6 of said contract of June 1, 1915, the District purchased from the United States storage rights in Arrowrock Reservoir to the extent of the proportionate part of the storage capacity of said

reservoir that Twenty-four Thousand Eight Hundred Forty Dollars (\$24,840.00) is of the total cost of said reservoir (\$4,750,000), and whereas, certain landowners of the District require some additional storage water and have applied to the District for approximately One Thousand Nine Hundred Ninety-two and three/tenths (1,992.3) acre-feet of additional storage capacity, and agreed to pay for the same;

IT IS HEREBY AGREED that in addition to the Twenty-four Thousand Eight Hundred Forty Dollars (\$24,840.00) provided in sections 6 and 7 of said contract of June 1, 1915, the District will pay to the United States the sum of THIRTY-NINE THOUSAND EIGHT HUNDRED FORTY-SIX and NO/100 DOLLARS (\$39,846.00) for storage capacity in Arrowrock Reservoir, and the United States will furnish the District in addition to the proportionate part heretofore contracted, the use and benefit of that portion of the total storage capacity of Arrowrock Reservoir which Thirty-nine Thousand Eight Hundred Forty-six Dollars (\$39,846.00) is of the total cost of said reservoir, and will deliver at the downstream end of the outlets of said reservoir for the District each year, as nearly as is reasonably practical, the same proportion of the stored water actually available from said reservoir, the said storage to be in addition to the amount heretofore contracted for and to be furnished in the same manner and upon the same

terms and conditions as the amount heretofore purchased under said contract of June 1, 1915.

7. AND WHEREAS, the Secretary of the Interior has approved rules and regulations for determining the irrigable acreage of the lands of the Boise Project outside of the District and under said rules and regulations has provided for certain reductions in irrigable acreage for rights of way of roads and canals;

IT IS HEREBY AGREED and understood by the parties hereto that the same reductions provided under said rules and regulations as to project lands outside of the District will be applied in determining the irrigable acreage of project lands in the District.

8. No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company, as provided in section 116 of the Act of Congress approved March 4, 1909 (35 Stat. L., 1109).

UNITED STATES OF AMERICA,
By E. C. FINNEY,
*First Assistant SECRETARY OF
THE INTERIOR.*

NAMPA & MERIDIAN IRRIGATION
DIST.,

By DAN BARKER,

President.

(SEAL)

ATTEST:

G. A. REMINGTON,
Secretary.

EXHIBIT "C"
PUBLIC NOTICE (No. 6)

BOISE PROJECT, IDAHO-OREGON

Department of the Interior,

Washington, D. C., February 15, 1921.

1. ANNUAL OPERATION AND MAINTENANCE CHARGE FOR DRAINAGE.—In pursuance of Section 4 of the National Reclamation Act of June 17, 1902, (32 Stat. 388) and of Acts amendatory thereof, or supplementary thereto, particularly the Extension Act of August 13, 1914, (38 Stat. 686) announcement is hereby made that the annual operation and maintenance charge for the irrigation season 1921 and until further notice against all lands of the Boise Project under Public

Notice (except the One Thousand Eight Hundred (1,800) acres, more or less in the State of Oregon) shall be divided into two parts:

(a) A regular operation and maintenance charge to be hereafter announced in the usual manner to cover all costs of operation and maintenance other than drainage.

(b) A special operation and maintenance charge for drainage purposes of One Dollar (\$1.00) per irrigable acre per year until further notice, to become due and payable Fifty (50c) cents per irrigable acre on April 1, 1921, and Fifty (50c) per irrigable acre on October 1, 1921, and Fifty (50c) cents per irrigable acre on March 1st and October 1st of each year thereafter until further notice, the money received from such special operation and maintenance charge to be used after the same has been paid in to the United States, in providing drainage on the Boise Project to minimize or prevent as far as possible the swamping and water-logging of the lower lying lands of the project by seepage from the irrigation of the higher lands and by seepage from the irrigation system of the project, to lessen the damage which would otherwise result from the operation of said canal system and to maintain the irrigability of the lands of the project, said drainage charge to be considered a part of the minimum operation and maintenance charge per irrigable acre, the remainder of

said minimum charge per acre and all charges per acre-foot of water used in excess of the amounts of water allowed for such minimum charge to be hereafter announced and determined by Public Notices to be hereafter issued from time to time.

JOHN BARTON PAYNE,
Secretary of the Interior.

EXHIBIT "D"

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PAYETTE-BOISE WATER USERS' ASSO-
CIATION, Limited,

Plaintiff,

vs.

J. B. BOND, et al.,

Defendants.

IN EQUITY NO. 640.

DECREE.

This cause coming on to be heard upon stipulation for decree, by the parties to said cause, and the same having been approved by the United States of America, acting in that behalf by the Secretary of the Interior, and it appearing from said stipulation that the plaintiff and the United States of America have entered into a certain supplemental contract bearing date the 12th day of July, 1921, wherein and whereby all differences between the parties in the above entitled cause have

been adjusted and settled, which said stipulation and supplemental contract, together with the two exhibits attached to said contract as "A" and "B", "B" being a copy of Exhibit "X" filed in the suit, incorporated herein and made part hereof, are as follows:

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PAYETTE-BOISE WATER USERS' ASSO-
CIATION, Limited,

Plaintiff,

vs.

J. B. BOND, et al.,

Defendants.

STIPULATION FOR DECREE.

The Plaintiff and the United States of America having entered into that certain Supplemental Contract bearing date the 12th day of July, 1921, wherein and whereby all the differences between the parties in the above entitled matter have been adjusted and settled, and wherein it is provided that Decree may be entered in said cause, it is therefore stipulated that Decree may be entered in said cause in accordance with the terms of said supplemental contract, a duplicate copy of which is hereto attached and made a part hereof.

That findings of facts and conclusions of law are hereby waived.

J. B. ELDRIDGE,
Attorney for Plaintiff.
J. L. McCLEAR,
B. E. STOUTEMYER,
Attorneys for Defendants
J. B. Bond, C. C. Fisher and
Charles F. Weinkauff.

Approved this the 19th day of July, 1921.
United States of America.

E. C. FINNEY,
Acting Secretary of the Interior.

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE,
BOISE IRRIGATION PROJECT.

*Contract Between the United States and Payette-
Boise Water Users' Association, Supplemental
to Contract of Feb. 13, 1906.*

THIS AGREEMENT, made this 12th day of July, 1921, between the UNITED STATES OF AMERICA, herein referred to as the United States, acting for this purpose through E. C. Finney, Acting Secretary of the Interior, herein referred to as the Secretary, under the provisions of the act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplemental thereto, herein referred to as the reclamation law, and the PAYETTE-BOISE WATER USERS' ASSOCIATION, LTD., herein referred to as the Association, witnesseth:

2. WHEREAS, under contract dated February 13, 1906, provision was made for the construction of the Boise Federal irrigation project, Idaho-Oregon, and for payment of the cost thereof; and

3. WHEREAS, in that certain case entitled, Payette-Boise Water Users' Association, Ltd., vs. J. B. Bond, et al., now pending undetermined in the District Court of the United States for the District of Idaho, Southern Division, there are involved, among other things, certain controversies with respect to the interpretation of said contract, to the payment of the cost of said project and to the quantity of water which the members of the Association shall receive for their lands; and

4. WHEREAS, it is desired by the parties hereto that said litigation be compromised and settled, and that all issues pending in said cause be adjusted, through the making of a contract supplementary to said contract of Feb. 13, 1906;

5. NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the parties hereto do hereby agree as follows:

6. That in addition to the one-half portion of Arrowrock Reservoir heretofore dedicated (in that certain instrument certified copy of which has been introduced in evidence in said suit as Defendants' Exhibit "X") to the lands referred to therein as

the "project lands of the constructed unit" of the Boise Project, the said project lands of the constructed unit of said project shall have the use and benefit of an additional Fifty/two hundred sixty-eighths ($50/268$ ths) of the capacity of Arrow-rock Reservoir and no more, and the said additional Fifty/two hundred sixty-eighths ($50/268$ ths) shall be paid for by the owners of such project lands upon the same terms and conditions applicable to the portion heretofore dedicated.

7. That if Congress authorizes and appropriates funds for such expenditure and such expenditure is voted and agreed to as supplemental construction by a majority of the water right applicants and entrymen affected by the charge therefor as provided in Section 4 of the Act of Congress of August 13, 1914, known as the Reclamation Extension Act. then as soon after July 1, 1922, as is reasonably practicable, the United States will expend Two Hundred Thousand (\$200,000) Dollars on canal improvements on the canal system of the Boise Project, to consist mainly of additional concrete lining and other improvement and enlargement work on the Main Canal. It is estimated by the Project Manager that such expenditure will provide sufficient enlargement of the said Main Canal to safely carry through said canal during the flood water season of an average or normal year, about Forty-eight Thousand (48,000) acre-feet more

water than has been carried heretofore, and to such extent without lessening the delivery of flood water from the canals during May and June, avoid drawing down Deer Flat Reservoir during said months.

8. Should the Secretary of the Interior find it advisable to do so, he may increase the amount to be expended on such canal improvement work to an amount not exceeding Two Hundred Twenty-five Thousand (\$225,000) Dollars. Any additional amount so expended shall be added to the amount (Seven Million Three Hundred Thousand (\$7,300,000) Dollars) provided in paragraph 13 hereof, to be used in determining the proper charge per acre at the next readjustment date. It is understood that similar elements of cost will be charged to such canal improvement work and a similar method of distributing overhead or general expense will be used, as has been used in the above case of other features of the Boise Project. After the completion of said canal improvement work, the Secretary of the Interior will furnish a statement of the amount expended thereon, which in the absence of fraud or such gross error as would be equivalent to fraud, shall be considered as final and conclusive and binding on all parties as to the amount expended thereon.

9. From and after the date that the said canal improvement work shall have been voted and agreed

to by a majority of the water right applicants and entrymen affected by the charge therefor as provided in Section 4 of the said Act of Congress of August 13, 1914, until the completion of the expenditure of Two Hundred Thousand (\$200,000) Dollars on said canal improvement work, the project lands of the constructed unit of the project may have the temporary use of the Twenty-six Thousand (26,000) acre-feet of Arrowrock storage, or Twenty-six Two Hundred Sixty-eighths (26/268ths) of the capacity of Arrowrock Reservoir intended for permanent use on proposed extensions of the project, but under no condition shall such project lands of the constructed unit of the project acquire, or be construed to have any right to the use thereof, or any part thereof, after the construction of said Two Hundred Thousand (\$200,000) Dollars of canal improvement work, and the Association, its shareholders, successors and assigns, and all those claiming under the Association, expressly consent and agree that upon the completion of the expenditure of Two Hundred Thousand (\$200,000.00) Dollars on such canal improvement work, the right to the use of the said twenty-six thousand (26,000) acre-feet of storage on the project lands of the said constructed unit of the project shall terminate and the right to the use thereof shall revert in the United States as fully and completely in all respects as if no part of said Twenty-six Thousand (26,000) acre-feet had ever been used

upon the said project lands of the said constructed unit of the project, and it is agreed and understood that after the expenditure of said Two Hundred Thousand (\$200,000) Dollars in the construction of said canal improvement work, the said Twenty-six Thousand (26,000) acre-feet, or Twenty-six/Two Hundred sixty-eighths ($26/268$ ths) of the said reservoir may be used upon the proposed Hillcrest Extension of the Boise Project in the Hillcrest and Boise-Mora Irrigation Districts, or applied to such other use as may be decided upon and approved by the Secretary of the Interior and the Decree in said suit shall so provide. It is understood, however, that the use and benefit of the return flow from the Hillcrest and Boise-Mora Irrigation Districts into the New York Canal and Indian Creek will be allowed to the project lands of the said first or constructed unit of the project, as an additional water supply. If said canal improvement work, after having been authorized by the water users, is stopped through any act of plaintiff or of a member of plaintiff, the temporary use of said 26,000 acre-feet of water shall immediately cease and be restored only upon the interference of said work having been removed.

10. It is agreed and understood that all future drainage work in the constructed unit of the said Boise Project shall be provided for by operation and maintenance charges to be announced from

time to time by the Secretary of the Interior as operation and maintenance charges for drainage purposes and assessed against all project lands in the constructed unit, or first unit of the project. The operation and maintenance charges for drainage purposes coming due and payable in 1921 shall be One (\$1.00) Dollar per acre, of which Fifty (50c) per acre shall come due and payable April 1, 1921, and Fifty (50c) per acre on October 1, 1921, and the Association, on behalf of itself and its shareholders, stipulates and agrees to the payment of the charges so announced for drainage purposes as a proper operation and maintenance charge, and the Association guarantees the payment of the said drainage charges so announced against its shareholders by the Secretary of the Interior, and will use all the powers and resources of the Association to assist the officers of the United States in the collection of the same, or to itself collect and pay the same to the United States, the funds so paid in for drainage purposes to be expended under the direction of the Secretary of the Interior in the construction of drainage works on the constructed unit of the Boise Project beginning with those portions of the project where in the opinion of the engineer in charge of the said project, after counseling and advising with the Board of Directors of the Association, and drainage is considered to be most urgently needed. The project lands of the constructed unit of the project may

have the use and benefit of the water supply developed in the proposed drainage system, provided the Association or owners of such project lands furnish the means for diverting, or pumping, such water from the drains into the canal system and pay the cost of the operation and maintenance of such pumps or other means of diversion.

11. It is hereby stipulated and agreed that an amended form of water right application to be provided for and required under the Decree in said suit shall contain a provision expressly agreeing to the payment for future drainage work on the said Boise Project as an operation and maintenance charge; that in said water-right application appropriate provisions shall be made for the return and repayment to the United States of the construction charges herein provided to be repaid, with reference and description of the interest acquired by the applicant when payments shall have finally been made as herein provided; that such water-right application shall be fully recorded; and the Court may limit the time in which water right application shall be received, and provide appropriate penalties for failure to execute and deliver such water-right applications, within the time provided in said decree. Such water-right application shall be in form as Exhibit "A" hereto attached and made a part hereof. It is understood that in executing this contract the Association waives no right to collect any and all unpaid assessments heretofore made

by it against its members or their stock in said Association.

12. It is understood, however, that the said operation and maintenance charge for drainage shall not apply to the Eighteen Hundred (1800) acres of project lands in Oregon which have been annexed to the Big Bend Irrigation District and have provided for drainage and are assessed therefor in addition to the regular charge for project water right.

13. It is hereby stipulated and agreed that the amount properly chargeable to the project lands of the constructed unit of the project outside of the Irrigation Districts and subject to the Association as the construction charge, is the sum of SEVEN MILLION THREE HUNDRED THOUSAND (\$7,300,000) DOLLARS, including the additional fifty/two hundred sixty-eighths ($50/268$) of the Arrowrock Reservoir, and the Two Hundred Thousand (\$200,000) Dollars of canal improvement work to be provided as supplemental construction, but not including future drainage work (which drainage work will be charged as operation and maintenance.)

14. That the construction charge per acre shall be readjusted every five (5) years for four (4) times and no more, and shall be determined by dividing the said sum of Seven Million Three Hundred Thousand (\$7,300,000) Dollars by the number of

acres of irrigable lands referred to as project or full Government water right lands in said first or constructed unit of the project outside of the Nampa & Meridian, Black Canyon and Settlers' Irrigation Districts then found to be subscribed to accepted water right applications and paying construction charges, and by debiting or crediting each tract with such amount as is necessary to adjust the construction charge to the new rate per acre so determined, allowing credit, or making additional charge to make up for any over-payment or under-payment in previous years, such credit (if there be a credit) to be allowed on the next construction payment coming due after such readjustment of the rate per acre, and such debit or additional charge (if a debit or additional charge be required in making such adjustment) to be added to and become due and payable at the date of the next construction payment after the date of such readjustment of the charge per acre, and it is agreed and understood that it shall be provided in the Decree and in the amended form of water right application to be provided for in the Decree, that the rate of construction charge per acre so determined as aforesaid (whether more or less than the rate announced in the Public Notice and set out in water right applications previously signed) is the rate which shall control and the rate which shall be paid by all of the Association's shareholders.

15. Acreage on which the charges are suspended on account of seepage shall be deducted in arriving at the number of acres to be used as the divisor in determining the proper charge per acre, but whenever any part of such suspended areas shall be brought back to a productive condition and be again irrigated and be placed on a paying basis, then the acreage so recovered shall at the next readjustment date be added to and be considered a part of the number of acres to be used as the divisor in determining the proper charge per acre. In determining what part of any tract or farm unit is irrigable, the amount shown as irrigable on the official form unit plats shall be used.

16. Whenever any shareholder of the Association shall be in arrears more than one (1) year for the payment of any charge for operation and maintenance and penalties, or any part thereof, the Association will, upon notice from the Secretary of the Interior, or the agent or employee of the Secretary of the Interior in charge of the Boise Project, use all the powers and resources of the Association to enforce payment by such stockholder to the United States and to carry out the Association's guarantee under the contract of February 13, 1906, between the Association and the United States, but if on account of the abandonment of any tract of land, or for any other reason, any construction or operation and maintenance payments thereon re-

mains due and unpaid for more than three (3) years, the same shall then be considered as not being on a paying basis and shall be deducted from the number of acres used as the divisor in determining the proper charge per acre at the next readjustment date, but may be again added to the acreage used as divisor if payments are resumed.

17. The charge per acre shall be first readjusted as provided above on January 1, 1926, or as soon as practicable after such date and according to the conditions existing on said date and shall be again readjusted each fifth (5th) year thereafter, limited, however, to 4 readjustments and no more.

18. If on account of failure of the necessary majority of the water users affected thereby to vote or agree to pay the said Two Hundred Thousand (\$200,000) Dollars of canal improvement work as supplemental construction, or for any other reason the said canal improvement work should not be built, proper credit will be allowed at the next readjustment date.

19. It is agreed that the acreage of project lands in the constructed unit of the project outside of the Nampa & Meridian and Settlers' Districts which is now subscribed to water right applications is Ninety-five Thousand One Hundred Nine (95,109) acres, and that the payments of Eight Hundred Fifty-two (852) acres are now suspended

on account of seepage, and that the construction charge per acre until the first readjustment on January 1, 1926, shall be determined by dividing said Seven Million Three Hundred Thousand (\$7,300,000) Dollars by Ninety-four Thousand Two Hundred Fifty-seven (94,257) acres, subject to readjustment every five (5) years as above provided. Credit for any over-payments heretofore made will be allowed on the construction instalment coming due December 1, 1921.

20. In the operation of the said Boise Project after the construction of said Two Hundred Thousand (\$200,000) Dollars of canal improvements, the United States and its successors in control of the project will try to equalize the benefits and the water supply between the lands supplied from Deer Flat and the lands supplied from Arrowrock as far as practical and to that end will furnish as an additional water supply for the said project land above Deer Flat the Arrowrock storage secured by delivering certain waste and seepage waters into the Riverside and Phyllis Canals in exchange for Arrowrock storage to which the lands under said canals would otherwise be entitled, estimated to amount to about Two Thousand Two Hundred (2,200) acre-feet, and so far as practical will avoid running any Arrowrock storage water through Deer Flat after the use of stored water for irrigation has begun.

21. If a majority of the water users by vote or agreement approve the gradual enlargement of the Mora and Waldvogel Canals from year to year in connection with the annual cleaning work and the charging of such work to operation and maintenance, such gradual enlargement will be so carried on and charged unless it is held by the courts that that cannot be lawfully done.

22. It is understood that the said sum of Seven Million Three Hundred Thousand (\$7,300,000) Dollars includes ten/fourteenths ($10/14$ ths) of the amount charged in said Defendants' Exhibit "X" on account of what is known as the Page and Brinton claim now pending in the Court of Claims, said Court of Claims having allowed the amount of Fifty Thousand Two Hundred Twenty-eight and Ninety-three Hundredths Dollars of the sum of Three Hundred Twenty-five Thousand Nine Hundred Thirty-one and Ninety-seven Hundredths Dollars, being the amount of said Page and Brinton claim, and it being understood and agreed that an appeal may be taken by Page and Brinton or the United States in said cause, and that what may finally be paid cannot at this time be ascertained, and it is agreed that should such claim not be paid, or a less amount be paid thereon than charged in said Exhibit "X", then at the next readjustment date after the final termination or settlement of said case, the proper reduction shall be made in said sum of Seven Million Three Hundred Thousand

(\$7,300,000) Dollars to the extent of Ten/fourteenths (10/14ths) of the difference between the amount charged in said Exhibit "X" on account of such claim, and the amount actually paid thereon, and proper allowance be made in readjusting the construction charges. It is understood that the said Page and Brinton claim is being resisted by the United States in said Court of Claims as an unwarranted and unjust claim and it is understood and agreed between the parties hereto that it is not intended by this instrument to recognize said claim, or any part thereof, as being a valid claim, and the Court may so provide in its Decree entered hereunder; and it is agreed that in similar manner any other claim, or judgment, which may hereafter be actually paid and not charged to operation and maintenance, may be added to the said Seven Million Three Hundred Thousand (\$7,300,000) Dollars in determining the proper charge at the next readjustment date.

23. It is agreed that the Court may enter Final decree in harmony with this contract.

24. No member of or Delegate to Congress, or Resident Commissioner, after his election or appointment or either before or after he has qualified and during his continuance in office, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be con-

strued to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company, as provided in Section 116 of the Act of Congress approved March 4, 1905 (35 Stat. L., 1109).

25. A copy of the dedication referred to herein as Defendants' Exhibit "X" is hereto attached, marked Exhibit "B", and made a part hereof.

UNITED STATES OF AMERICA,
By E. C. Finney, Acting Secretary.
BOISE-PAYETTE WATER USERS'
ASSOCIATION, LTD.
By C. M. Rankin, President.

ATTEST:

L. J. Magee, Secretary.
(Corporate Seal)

EXHIBIT "A"
DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE
BOISE IRRIGATION PROJECT

WATER-RIGHT APPLICATION

.....
(Serial Number)

.....
(Date)

1. I,, in
pursuance of the provisions of the Reclamation Act

approved June 17, 1902, (32 Stat., 388), and acts amendatory thereof or supplementary thereto, especially the act approved August 9, 1912 (37 Stat., 265), and the act approved August 13, 1914 (38 Stat., 686), all hereinafter called the Reclamation Law, and the rules and regulations established thereunder, do hereby apply on behalf of myself, my heirs, executors, administrators, and assigns, for a water right for the irrigation of, and to be appurtenant to,acres of irrigable land, as shown on plats approved by the Secretary of the Interior within the tract described as follows:

.....

 Section
 Township....., Range.....
Meridian, containing a total of
acres.

2. The measure of water right for said land shall be the pro rata share as nearly as practical operations will permit, of the waters agreed to be furnished in that certain supplemental contract between the United States of America and the Payette-Boise Water Users' Association, Ltd., bearing date the 12th day of July, 1921, and the decree of court hereinafter referred to, and the dedication attached to said contract, which the number of irrigable acres described in this application is of the number of irrigable acres of project lands in the said first or constructed unit of the Boise Project.

3. I agree (a) to pay the annual instalments of the construction charge as provided in said above mentioned Supplemental contract, and the Decree of the Court in the case of Payette-Boise Water Users' Association, Ltd. vs. J. B. Bond, et al., in the United States District Court for the District of Idaho, Southern Division, at the rate of \$77.44 per acre of irrigable land subject to adjustments as provided in said Supplemental contract, and said Decree of Court as aforesaid, and to proper credits for all construction charges heretofore paid, on account of said land, and in addition thereto the annual charges for operation and maintenance as prescribed by the Reclamation Extension Act, and all penalties which may accrue for failure to make payments at the proper time; (b) that the construction charge and each and all of said annual charges for operation and maintenance with accrued penalties shall be and the same are hereby made a lien upon the tract of land above described and all water rights now or hereafter appurtenant or belonging thereto and all improvements now existing or hereafter made thereon, promising, covenanting, and agreeing to pay all taxes and other claims now or hereafter becoming a prior encumbrance, failing which, upon demand by any proper officer of the United States, or its successors in control of said project, the United States, or its said successors may pay the same and add the amount thereof to

the lien hereby created and recover the amount so paid as part of the said lien.

4. Upon my failure to comply with the terms of the Reclamation Law, and the regulations thereunder, this application may, in the discretion of the Secretary of the Interior, be cancelled by him with the forfeiture to all rights under the Reclamation Law and of all moneys theretofore paid hereon; excepting, however, from the force and effect of this paragraph any and every failure to make payments which shall become due and payable after the issuance of final certificate for the water right hereby sought under the Reclamation Law, a remedy for the failure thus excepted having been provided by said Law.

5. This application must bear the certificate, as hereto attached, of the water users' association, under said project, which has entered into contract with the Secretary of the Interior, and the liens which the United States holds against the above-described land for the payment of the construction, and the operation and maintenance charges, may be enforced, at the option of the United States, either directly by the United States, or where any such lien was given directly to the water users' association for the benefit of the United States, may be enforced through the medium of the water users' association; but the election of one remedy shall

not preclude the United States from following the other.

6. I further agree that the United States and its successors in charge of the said unit shall have full control over all ditches, gates, and other structures owned or controlled by the applicant or his successors in interest and which required to deliver water hereunder, and proper officers and employees of the United States and its successors shall have at all times the right of access to the above-entitled premises whenever it is, in the judgment of the officer or employee in charge of said unit, necessary for them in the discharge of their duties of distributing water to exercise said control. The apportionment and distribution of the water in accordance herewith shall be performed by the Project Manager and his successor. And I do hereby give, grant, bargain, sell, and convey to the United States and its said successors the right for any such proper officer or employee to go and come upon any and all lands now or hereafter owned or held by me or them for any necessary or proper purpose and there exercise said control. In distributing and apportioning the water the Project Manager may take into consideration the character and necessities of the land. The remedy of any party feeling aggrieved by any alleged shortage or mistake in the delivery of water shall be by application first to the Project Manager, and then if necessary to the Court for an order for the correction of such

error or mistake, but neither the United States nor its officers or agents shall be liable in damages on account of any alleged shortage or mistakes in the delivery or division of the waters of the project.

7. It is understood and agreed that the United States reserves the right upon my failure or the failure of my successors in interest to keep and perform any of the provisions in this instrument contained by me and my successors in interest undertaken to be kept and performed, to refuse to deliver water to said lands or to stop the delivery of water thereto if water is being delivered, and such refusal to deliver or stoppage of delivery of water shall not operate to cancel this application, but shall be considered as an additional remedy to the United States to any remedies existing by reason of the provisions of this application or otherwise.

8. And I do hereby grant, bargain, sell, convey, and confirm to the United States of America and its successors in charge of the project all rights of way for ditches, canals, flumes, pipe lines, telegraph and telephone transmission lines, or other structures now constructed, or hereafter found necessary for construction, by or under the authority of the United States for or in connection with the said project, and all rights of way that may be or become necessary and suitable and that may be required for the prosecution and operation of the said project, and for the construction, mainte-

nance, and operation of ditches, canals, flumes, pipe lines, telegraph and telephone, and transmission lines, constructed by or under authority of the United States and its successor in charge of the project for and in connection with said project, to have and hold the same, together with all the tenements, hereditaments, privileges, and appurtenances thereunto belonging or in anywise appertaining to the United States of America and its assigns and successors in charge of the project forever, subject notwithstanding to the conditions upon which this application is made. It is understood and agreed that the United States reserves the right to recover and use for the benefit of the project all waste and seepage water arising on or flowing from said land and does not abandon but intends to use the same but as to water developed in the proposed drainage system it is understood that this reservation is subject to the provisions of paragraph 10 of contract of July 12, 1921, between the United States and the Payette-Boise Water Users' Association.

9. In consideration of the benefits received and to be received, and of the covenants herein contained, I promise and agree, to pay as an operation and maintenance charge, assessments for drainage upon the Boise Project, as levied from time to time by the Secretary.

10. No Member of or Delegate to Congress, or Resident Commissioner, after his election or ap-

pointment or either before or after he has qualified and during his continuance in office, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such corporation or company, as provided in Section 116 of the Act of Congress approved March 4, 1909, (35 Stat. 1109).

11. And I, the said....., being duly sworn, depose and say that my post-office address is.....; that I am, or that I or my predecessor in interest was at the time of filing original water right application, a bona fide resident upon said land (or occupant thereof, residing in the neighborhood, namely, upon Section....., Township....., Range....., Meridian, a distance in a direct line of.....miles therefrom); that I hold the following interest in the said tract:

..... as, duly shown upon the records of..... County, in volume (liber).....at page (folio).....; that no other application, now uncanceled, has been made for a water right under the Reclamation Law, appurtenant to land now owned or reclaimed by me, except as follows:

Application No., Project, of for

Section, Township,
 Range, Meridian, an
 area ofacres and containing.....
 acres of irrigable land, as determined by the Sec-
 retary of the Interior, for which the present appli-
 cation is substituted; and that the present appli-
 cation is made in my own behalf and not at the
 instance or for the benefit of any other person or
 any association or corporation either directly or
 indirectly.

12. Nothing in this application contained shall
 be construed as in any manner or at all abridging,
 limiting, or depriving the United States of any
 means of enforcing any remedy in law or equity
 for the breach of any of the provisions of this ap-
 plication which it would otherwise have.

13. This contract shall extend to and be bind-
 ing upon the heirs, succesors, and assigns of the
 parties hereto.

IN WITNESS WHEREOF, I,.....
 have hereunto set my hand and seal this.....
 day of....., 1921.

..... (Seal)

..... (Seal)

In the presence of:

(Three witnesses must sign here.)

.....

.....

.....

ACKNOWLEDGEMENT.

State of Idaho)
) ss.
 County of.....)

On this the day of, 1921,
 before me,, a notary
 public in and for said State of Idaho, personally
 appeared
 and
 known to me to be the person..... who executed the
 within instrument and acknowledged to me that
execute..... the same:

In witness whereof I have set my hand and af-
 fixed my official seal the day and year in this cer-
 tificate first above written.

My commission expires.....

.....
Notary Public for Idaho.

Residing at....., Idaho.

STATE OF.....)
) ss.
 COUNTY OF.....)

....., being duly
 sworn, deposes and says that he is the person (or
 one of the persons) who signed the foregoing in-
 strument; that he has read the same and knows the
 contents thereof and that all the statements of fact
 made by him in said instrument are true of his
 knowledge, except such as are made upon informa-

tion and belief and as to those he believes them to be true.

.....
Subscribed and sworn to before me this.....
day of, 1921.

.....
Notary Public for Idaho.

Residing at....., Idaho.

My commission expires.....

....., 1921.

I hereby certify that the applicant signing the above instrument has duly subscribed (or is the successor in interest of one who has subscribed) for the stock of this association for the lands described therein.

.....
*Secretary.....Water Users'
Association.*

Approved and accepted this..... day
of, 1921, by authority of the
Secretary of the Interior.

.....
Project Manager.

The Payette-Boise Water Users' Association, Ltd. agrees to the within and foregoing covenants, it being understood, however, that in so doing said Association waives no right to collect any and all unpaid assessmensts heretofore made by it against

its members or their stock in said Association.

PAYETTE-BOISE WATER USERS'
ASSOCIATION, Ltd.

ByPresident.

ATTEST:Secretary.

Now, therefore, in accordance with said stipulation and supplemental contract, it is ordered, adjudged, and decreed that the construction, drainage and other charges of said project be paid to the United States of America, in the amounts and in the manner and upon the terms and conditions as provided by law and as set forth in said stipulation and supplemental contract; that all of the members of plaintiff upon said Boise Project within said first constructed unit or division shall, on or before sixty days from the date of this decree, execute and deliver to the plaintiff association, who shall in turn approve, execute and deliver to the Project Manager of the Boise Project, a water right application in form as that attached to said stipulation and supplemental contract, forming a part of this decree as aforesaid; and that all the members of plaintiff shall be entitled to the water right, or right to the use of the waters of said system, as defined in said stipulation and supplemental contract and the dedication attached thereto as Exhibit "B", upon the terms and conditions therein set out, and that all of the covenants and agreements of said stipulation and supplemental contract are hereby adopted and confirmed as a part of this

decree as fully and completely as if specifically set out in the body of this decree. Provided that where there is a provision of law prescribing the conditions under which water may be denied a user because of his default, neither the form of water right application incorporated herein nor the requirement hereof that such form be executed shall be construed as adding to or curtailing the rights of any party in interest as the same are defined by such provision of law. Nor in case of a controversy in good faith shall such application or this decree be construed as curtailing or opposed to the right of a water user to apply to a court of competent jurisdiction for temporary relief, or the power of such court upon a proper showing to direct that water continue to be supplied to the user until the controversy with him can be adjudicated or otherwise settled.

It is further ordered and decreed that after the expiration of sixty days from the date hereof the Project Manager may, in his discretion, decline to furnish water to any member of the plaintiff association for lands upon said first constructed unit or division outside of the organized irrigation districts, so long as such member neglects or refuses to execute said water right application as aforesaid.

The injunctive orders heretofore made heretofore are modified to conform to stipulation and contract

attached hereto and so modified will be continued in force until further order of the court or until the applications provided for herein have been filed. And the court retains jurisdiction of this cause for the purpose of making such further orders or disposition thereof as may be deemed proper.

No costs are awarded to either party.

Dated this 28th day of July, 1921.

FRANK S. DIETRICH,
District Judge.

Endorsed, Filed July 28th, 1921.

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

EXHIBIT "E".

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PAYETTE-BOISE WATER USERS' ASSO-
CIATION, LIMITED,

Plaintiff,

vs.

J. B. BOND, et al.,

Defendants.

No. 640.

SUPPLEMENTAL OR AMENDATORY
DECREE.

This cause came on to be further heard this 30th day of August, 1921, all attorneys of record for the respective parties being present, and it appearing that by inadvertance the decree here-

tofore, to-wit, on the 28th day of July, 1921, entered upon the stipulation and agreement of the plaintiff and the duly authorized representatives of the Government, contains no provision disposing of the case as to other parties, and all parties through their respective counsel, now consenting that a supplemental or amendatory decree may be entered upon the record and the evidence heretofore adduced; therefore, to supplement said decree of July 28th, 1921, it is upon consideration, ordered, adjudged, and decreed as follows:

1. Upon motion of their attorney, the intervenors' complaint in intervention is hereby dismissed without prejudice.

2. The plaintiff is without right in and has no lien upon any lands within the Pioneer Irrigation District, or within the Nampa & Meridian Irrigation District, and is without right in or lien upon any lands lying under and receiving water from the canal of the Riverside Irrigation District, a private corporation, by virtue of the stock subscription contracts referred to in the complaint.

3. Pursuant to the terms of its contract with the Government, the Pioneer Irrigation District is the owner of the right to receive an undivided 56/750ths part of the storage water of Arrowrock reservoir, to be delivered as provided in said contract, and that the plaintiff is without right in or title to such proportionate interest.

4. Pursuant to the terms of its contract with the Government, the Nampa & Meridian Irrigation District is the owner of the right to receive such part of the waters stored in Arrowrock reservoir as corresponds to the ratio between \$64,686.00, the amount paid to the Government therefore, and \$4,601,183.82, the cost of the reservoir, to be delivered as provided in said contract, and that the plaintiff is without right in or title to such proportionate interest.

Both of said rights are apart from and do not infringe upon the rights of the plaintiff in Arrowrock reservoir and the water stored therein, as defined and provided for in the original decree and the agreement embraced therein, and it is not to be understood that said decree is in any wise modified or affected by any provision herein contained.

Dated this 2nd day of September, 1921.

FRANK S. DIETRICH,

District Judge.

Endorsed, Filed Sept. 1, 1921,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

MOTION TO DISMISS.

Comes now the Defendant, J. B. Bond, and moves the Court to dismiss the complainant's complaint herein on the ground that the facts stated in the said complaint are insufficient to constitute

a valid cause of action in equity and that the said complaint states no ground for equitable relief.

E. G. DAVIS,
B. E. STOUTEMYER,
Attorneys for Defendant.
Residence: Boise, Idaho.

Service by delivery of copy acknowledged this 22nd day of April, 1922.

HUGH E. McELROY,
Attorney for Complainant.

Endorsed: Filed April 22, 1922,

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 983.

DECISION ON MOTION TO DISMISS COMPLAINT.

In accordance with the expressed desire of the parties, the averments of the complaint are given a liberal construction to the end that the merits of the controversy may be adjudged upon the motion to dismiss without the necessity of a trial more fully to disclose the particular facts.

1. Our discussion may be clarified by having at the outside a just understanding of the plaintiff's relation to the subject matter of the suit. Whatever may be its formal, legal status under its contract with the Government, it is not the real party in interest. In practical effect it is but an

intermediary, an agency, resorted to by the real parties in interest, for convenience, in the distribution of water and the collection of charges on account thereof. Back of it, as the real plaintiffs are the project lands within its borders; they are the sole beneficiaries.

2. Originally these lands had precisely the same status as all other lands on the Project.

3. This status was not materially altered by the contract between the District and the Government. The contract concerns procedure, and relates to form rather than substance. It clearly discloses the intent of the parties thereto that in effect all Project lands, both within and without the District, were to continue to be upon the same footing, sharing ratably in the benefits and burdens of the irrigation system.

4. While the facts are not expressly pleaded, it does appear in the record of the case the decree in which plaintiff pleads and exhibits as a part of the complaint, and in the public reports of the Reclamation Service, that the cost of the drainage facilities constructed in the plaintiff district under the terms of the contract exhibited in the complaint (other than the part thereof allocated to old water right lands) was charged not to the plaintiff lands alone, although they were the only lands protected thereby, but ratably to all the lands in the Project. It is a further known fact that of the other Project

lands some are on the system above the plaintiff lands and other are below; and most of these lands could receive no benefit at all from such drainage facilities and the others could be only slightly or indirectly benefited.

5. In fairness and equity, then, what can be said in defense of the position for which the plaintiff lands now contend? During the earlier part of the operation of the system, when they were threatened with destruction or injury from the rising ground water, they sought and were given protection by the construction of a drainage system, the cost of which was included in the general construction charge, and as such was, of course, ratably apportioned to all the lands in the Project. Now when as a result of the further operation of the system, for their use and benefit, as well as for the balance of the Project, other lands are menaced in the same way and from the same source, they seek to shift the entire burden of similar protective measures to the lands to be directly benefited. When they were threatened they did not, as now, invoke the doctrine of assessment of benefits; at least no such doctrine was recognized or applied in distributing the cost of the drainage facilities created for their protection.

6. Though there is no equity in the position, we are asked to sustain it because of certain consideration of technical law. In substance, as I

understand it, the reasoning is that the plaintiff lands are in an irrigation district, that the charges must be collected by assessments under the state law, and that before such assessments can be made there must be an apportionment of benefits; and that the plaintiff lands are in no need of further drainage facilities and hence no benefits can be apportioned. But in so reasoning sight is lost of a fundamental characteristic of all irrigation systems constructed under either the state or the federal laws. Such a project is an indivisible unit, the burden of constructing and maintaining which is apportioned ratably to all lands receiving water therefrom. A water user cannot divide a system into its component parts and decline to pay his share of the cost of constructing or maintaining, or of operating, those portions from which he receives no direct benefit. If a wasteway at the lower end of a system, or a drainage ditch, is essential to the lawful and efficient maintenance and operation of the system, it is properly to be regarded as a part of the system and a water user near the head can no more consistently decline to pay his ratable share for its construction and maintenance than he could decline to pay for the lower portion of the main canal, or for laterals that do not serve his lands. When the drainage ditches within the plaintiff district were constructed for the plaintiff lands they were correctly treated as a part of the irrigation system, and quite as correctly their cost

was distributed ratably to all the lands without consideration of the question of direct benefit. It follows that by the apportionment already made in the district of the benefits of the system as a whole, pursuant to the state statutes, the basis of distributing cost has been fixed once for all; not the cost of constructing or maintaining any single unit but the entire system, including every feature thereof whether primary or auxiliary. It is the apportionment of the burden of constructing the entire project in accordance with the benefits received by the several tracts of land from the Project as a whole.

7. There is the further contention that this is not a proper charge for "operation" and "maintenance". These terms are found both in the reclamation act, as amended, and the contract between the plaintiff district and the United States. They are of elastic and often indefinite import. In systems of accounting, especially of public service corporations, what should be entered as capital or construction, and what as operation or maintenance, is not infrequently a question of great difficulty, and is sometimes susceptible of only an arbitrary answer. If in strictness we undertake to apply the narrow views advanced by the plaintiff that the maintenance of an irrigation system is accomplished by "merely maintaining the status quo" of the physical plant, we are soon driven to absurdities. If a wooden head-gate rots out we could not replace it with one of concrete, though

satisfied that in the long run it would be economy so to do. If there turns out to be excessive seepage in a section of the canal it cannot be prevented by puddling or otherwise treating the canal to prevent waste, for that would be to change to status quo. If there is a break in the earth bank of the main canal on a side hill, however great the danger of a repetition of the break, and however prudent it would be to re-enforce the earth with a concrete lining, thus insuring against future disaster, such a course would be to alter the status quo, and therefore could not be followed without putting into motion the complicated machinery required for raising money for new construction work. But illustrations without number, of the inadequacy and impracticability of such a view, will readily occur to anyone who has observed the operation of a large irrigation system, either at close range or from a distance. The government has fixed the construction charge upon this system, under the law, and it cannot now add to it without the consent of a majority of all of the water users. If, in the management of this great system, with its hundreds of miles of canals, its dams, and gates and a multitude of devices for diverting, impounding, carrying and distributing water, it cannot in an intelligent way provide for new conditions, or in the light of experience make new and better provision for old conditions, by charging the reasonable expenses thereof to maintenance and operation, the value and ef-

iciency of the system would be greatly impaired. Surely such a result could not have been intended by Congress, or by the parties to the contract here involved. The terms maintenance and operation must have been used in a broader sense—a meaning perhaps not susceptible to precise and comprehensive definition but none the less well understood.

True, the expenditures under consideration is relatively large, but it is to be borne in mind that it is to meet a condition which has gradually grown up as a result of the continued operation of the system. If each year there had been a collection and expenditure of an amount commensurate with the result of that year's operation, the case would present a different aspect, but would involve the same principle. By express admission the condition to be overcome is the direct result of operation, and is an incident thereof, and if the Project is to be "maintained" the expenditure must be made. If in the course of operation the management incurred a liability for injury to land by flooding or for destruction of crops, undoubtedly the expense of discharging such a liability would be borne as an operating expense. May it not take the less expensive course of providing safe-guards against such flooding and charge the expense thereof to maintenance and operation? With knowledge that the operation of the system without drainage facilities will inevitably swamp large areas of land, rendering the same worthless and destroying the

crops and trees growing thereon, must the plaintiff stand by until confronted with claims for damage?

Plaintiff frankly concedes that the condition against which the Government seeks to provide is a direct result of operating its irrigating system. It also concedes that while ground water is always a possible, if not a probable contingency, drainage facilities to take care of it cannot safely be provided in advance, for there can be no intelligent prognosis of just where such waters will rise and do or threaten injury. If, however, the cost of such facilities are chargeable only to construction, the Government is in this dilemma: Until it has completed its irrigation system and sold water rights and has delivered water to supply them, it cannot include such cost in the cost of construction, for there are no possible data upon which to base an intelligent estimate of the amount. But it must fix the "construction charge" before it can sell water rights. Hence such charge cannot be included in the construction cost as declared in the Public Notice; and the amount fixed in the Public Notice cannot thereafter be increased without the consent of a majority of the water users. Whether such consent would ever be given, even in case of the most urgent need, if such need is not general but only local as is likely always to be true, is a question that may be referred for answer to the attitude of the plaintiff lands in the instant suit.

It is not thought that Congress could have intended that the terms, operation and maintenance, should be construed so strictly as thus to render the Reclamation Service impotent to protect the Government investment and the interests of the settlers. A reclamation project is for the reclamation and not the destruction of lands, and it is expected that the reclaimed lands will return the investment and maintain the Project as a going and fruitful concern. Here is an operation result highly injurious to the Project. If the proposed protective measures are not taken, admittedly a large area of Project lands will be rendered worthless. If they are thus made worthless they will not only be incapable of returning to the Government their ratable and apportioned part of the construction cost, but they will also necessarily fail to carry any part of current maintenance and operation, and thus will be shifted their proper burden to the remaining lands on the Project, including the plaintiff lands. But this is not all. If in principle the plaintiff's contention is right, it is equally applicable to a case where the ground water rises uniformly over the entire Project, and threatens the destruction of all the lands at the same time. In such a case the Project as a whole cannot be "maintained" but is to be destroyed, as a result of "operation", because an admittedly sensible expenditure, by which such self-destruction can be avoided, may not be charged as an expense of either operation or

maintenance. In other words, the cost of self-preservation from an ordinary and necessary incident of operation is not chargeable to either maintenance or operation. To state the proposition is to reject it.

8. Finally it is suggested that until recently it has been customary with the Reclamation Service to carry drainage as a part of construction. I do not stop to inquire touching the correctness of the statement. The facts are not expressly pleaded, and if, so far as concerns this project, we go to the sources from which the facts are to be gotten, we find that at the time the drainage expenditures covered by the plaintiff's contract were made, the service also included in "Construction" cost, what are admittedly expenses of operation and maintenance. That is to say, during the long period prior to the giving of formal public notice the partially completed system was operated, and in the course of such operation large expenses were incurred over and above the rentals and other income for the same period, and this balance was covered into and charged against construction cost; it follows that a like disposition of the drainage expenditure has little interpretive significance.

It being thought that the proposed method of providing protective means, admitted to be necessary, against a menace, conceded to be the direct result of operating the system, is fair and equitable, and

contravenes no statutory or contractual rights, the motion to dismiss will be allowed.

HUGH E. McELROY,
Attorney for Plaintiff.
E. G. DAVIS and
B. E. STOUTEMYER,
Attorneys for Defendants.
ELDREDGE & MORGAN,
Attorneys for Intervenor.

Dated August 22, 1922.

Dietrich, District Judge.

Endorsed: Filed Aug. 22, 1922.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

DECREE.

It appearing that the foregoing cause was duly argued to the Court upon the motion of the Defendant, J. B. Bond, praying for an order for the dismissal of the bill of complaint, the Defendant present by B. E. Stoutemyer, Esq., his attorney and the Complainant present by H. E. McElroy, Esq., its attorney and the said Intervenor not present either in person or by attorney, and that the Court after due consideration allowed said motion and entered its order for the dismissal of said action on August 22, 1922;

Now therefore, it is hereby considered, ordered and adjudged that said action be and the same is

hereby dismissed and that the said Defendant recover his costs hereby taxed at.....

Dated this 25th day of October, 1922.

FRANK S. DIETRICH,
Judge.

O. K. B. E. Stoutemyer.

Endorsed, Filed Oct. 25, 1922.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

PETITION FOR APPEAL.

The above-named Complainant, feeling aggrieved by the decree and order of dismissal rendered and entered in the above-entitled caus on the 25th day of October, A. D., 1922, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the assignment of errors filed herewith and it prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and papers upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

HIGH E. McELROY,
Solicitor for Complainant.
Residence: Boise, Idaho.

ORDER ALLOWING APPEAL.

And now, to-wit: On this 8th day of November,

1922, it is ordered that the foregoing petition be granted and that the appeal be allowed as prayed for and that plaintiff file a bond on appeal in the sum of \$200, with good and sufficient security, to be approved by the Court.

FRANK S. DIETRICH,
District Judge.

Endorsed: Filed Nov. 8, 1922.

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

ASSIGNMENT OF ERROR.

Now comes the defendant in the above-entitled cause and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above-entitled cause, from the decree made by this Honorable Court on the 25th day of October, 1922.

First.

The Court erred in making the order filed on August 22, 1922, for the dismissal of the Bill of Complaint.

Second.

The Court erred in making and entering the decree in said action on the 25th day of October, 1922.

Third.

The Court erred in holding as a part of the said order mentioned in the first specification, that the cost of the proposed drainage works, referred to therein, constituted a part of the annual maintenance or operation charges of the Boise Project under the terms of Sec. 5 of the Act of Congress approved August 13, 1914 (38 Stat. 686), commonly known as the Reclamation Extension Act, or at all.

Fourth.

That the Court erred in holding as a part of said mentioned order, that the cost of the proposed drainage works, referred to therein, did not constitute an increase of the construction charges of Boise Project under the terms of Sec. 4 of the said Act of Congress commonly known as the Reclamation Extension Act, or at all, and was not governed by the provisions of said section.

Fifth.

That the Court erred in holding as part of said mentioned order that the Hon. Secretary of the Interior could announce or determine the amount of said drainage charge, or any part of the operation or maintenance charge of Boise Project, as a flat rate per acre.

Sixth.

That the Court erred in holding that Subsection (b) of Exhibit "C" attached to the Bill of Com-

plaint constitutes a sufficient determination or announcement of an annual operation or maintenance charge for the Boise Project under the terms of Section 5 of said Reclamation Extension Act.

WHEREFORE, the appliant prays that said decree be reversed and that the District Court be directed to overrule Defendant's motion to dismiss and to proceed with the hearing of said Court according to law and the rules of procedure governing the disposition of equitable causes.

HUGH E. McELROY,
Solicitor for Complainant.
Residence: Boise, Idaho.

Endorsed: Filed Nov. 8, 1922.

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS that we, Nampa & Meridian Irrigation District, as principal, and United States Fidelity & Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound under the above-named defendant in the sum of \$200, for the payment of which well and truly to be made, we bind ourselves and our successors and assigns, jointly and severally, firmly by these present.

Sealed with our seal and dated this 8th day of November, 1922.

The condition of this obligation is such, that whereas, the above-named Nampa & Meridian Irrigation District, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree made and entered in the above-entitled suit in the District Court of the United States for the District of Idaho, Southern Division, on the 25th day of October, 1922.

Now therefore if the above-named Complainant and Appliant, Nampa & Meridian Irrigation District, shall prosecute its said appeal to affect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

NAMPA & MERIDIAN IRRIGATION
DISTRICT.

By Hugh E. McElroy,
Solicitor.

UNITED STATES FIDELITY &
GUARANTY CO. OF BALTI-
MORE, MARYLAND,

By Henry Whitson,
Attorney in Fact.

(Corporate Seal)

Approved November 8, 1922.

Dietrich, Judge.

Endorsed: Filed Nov. 8, 1922.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

MOTION.

Complainant respectfully represents to the Court:

1. That it has perfected an appeal from the decree allowing the motion of the defendant for a dismissal of the Bill of Complaint and filed its praecipe with the Clerk for the transcript on appeal and defendant has consented to the terms of said praecipe.

2. That the Solicitors for Intervenor have filed a praecipe requesting the Clerk to include in said transcript a copy of the Complaint in Intervention filed by Intervenor.

3. That the Complainant objects to the inclusion of said copy of the Complaint in Intervention in said transcript for the reason that the same is not material to said appeal and would impose heavy and unnecessary expense on Appellant.

Wherefore, a difference having arisen between said parties concerning the general contents of the said record, Complainant hereby submits the same to the Court for determination under sub-section (c) of Rule 75 of the Rules of Practice for courts of

equity of the United States and prays the Court for an order covering the same.

HUGH E. McELROY,
Solicitor for Complainant.

Residence: Boise, Idaho.

Service by copy acknowledged this 7th day of December, 1922.

ELDREDGE & MORGAN,
Solicitors for Intervenor.

Endorsed: Filed Dec. 8, 1922.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

PRAECIPE FOR FURTHER TRANSCRIPT
SUGGESTED BY INTERVENOR.

TO THE HONORABLE W. D. McREYNOLDS,
CLERK OF THE ABOVE ENTITLED COURT:

You will please prepare and incorporate in the record on appeal of the plaintiff and appellant, Nampa & Meridian Irrigation District in the above entitled cause, the bill of complaint in intervention, filed by Payette-Boise Water Users' Association, Ltd., intervenor.

Dated this 7th day of December, 1922.

ELDREDGE & MORGAN,
Solicitors for Intervenor.

Residence: Boise, Idaho.

Due service of the above and foregoing praecipe for further transcript suggested by intervenor and

receipt of copy is hereby admitted this 7th day of December, 1922.

HUGH E. McELROY,

Endorsed: Filed Dec. 7, 1922.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

STATEMENT FOR THE RECORD.

Pursuant to order of the Court, Payette-Boise Water Users' Association, Ltd., filed a complaint in intervention in said cause, filed a motion to dismiss, embodied in the complaint in intervention and presented a written brief on the hearing of the motion to dismiss and set out, as a part of its complaint in intervention, a large number of exhibits, including what is known as Exhibit "X" in the record of the Payette-Boise Water Users' Association, Ltd., vs. J. B. Bond, et al., and referred to in the bill of complaint by the Nampa & Meridian Irrigation District and which said Exhibit "X" was omitted from the record in the bill of complaint but was referred to therein, as aforesaid, and which said Exhibit "X" was before the Court when it rendered its decision in said cause;

That said Exhibit "X", forming a part of this statement, constitutes a part of the contract between the Government of the United States, bearing date the 12th day of July, 1921, being the contract of which the complainant in this cause com-

plains and seeks to set aside and the Payette-Boise Water Users' Association, Ltd., intervenor herein; that the complaint in intervention contained a large number of exhibits and upon praecipe being filed by intervenor for further record, asking that the whole of said bill of complaint in intervention be incorporated in the record, a hearing was had thereon upon objection of the complainant in this cause and the Court ordered that the complaint in intervention, in chief, together with Exhibit "X", as aforesaid, be incorporated in the record on appeal; that the following complaint, together with Exhibit "X", constitutes the complaint proper in the Court below and the particular Exhibit "X" incorporated therein, as aforesaid.

(Title of Court and Cause.)

COMPLAINT IN INTERVENTION.

Leave of Court first being had Payette-Boise Water Users' Association, a corporation, files its complaint in intervention, and for ground of complaint alleges and states:

I.

That at all times herein mentioned plaintiff was and is a corporation duly organized and existing under and by virtue of the laws of the State of Idaho with its principal place of business at Caldwell, Idaho.

II.

That plaintiff is interested and affected by the controversy involved in said cause, and is a necessary and indispensable party to the final determination of said cause for the reasons hereinafter stated.

III.

That on or about the 13th day of February, 1906, plaintiff herein entered into a certain contract with the Government of the United States, a copy of which marked Exhibit "A" is hereto attached and made a part hereof.

IV.

That under and by virtue of the terms of said contract, intervenor for and on behalf of its members contracted and agreed with the United States for the construction of the irrigation works known as the Boise Project, covering approximately 143,000 acres of land within Ada and Canyon Counties, State of Idaho; that of said 143,000 acres approximately 40,000 acres of which lie within the Nampa & Meridian Irrigation District, plaintiff in this cause, and that said 40,000 acres is identical in description with the 40,000 acres described in paragraph 4 of the complaint on file herein.

V.

That under and by virtue of said contract of February 13, 1906, intervenor herein became guar-

antor for the return of the construction charge of the United States of America of the moneys expended and to be expended by the Government of the United States in the construction of the Boise Project under and by virtue of the terms of said contract; that said Boise Project in pursuance of said contract was by the Secretary of the Interior, acting by the United States, duly constructed.

VI.

That the members of intervenor are the settlers and land owners upon said Boise Valley Project; that the stockholders and members of this plaintiff have procured all their rights to the use of water from said Government Project under and by virtue of the contracts and decree of Court herein referred to between this plaintiff and the Government of the United States.

VII.

That plaintiff's members and stockholders comprise approximately 2,000 settlers upon what is known as the Boise Project and land owners thereunder.

VIII.

That certain litigation arose between this plaintiff and certain officers of the Reclamation Service, and that in settlement of said controversy that a certain contract between the plaintiff herein and the Government of the United States, bearing date of the 12th day of July, 1921, was entered into;

that among other things under and by virtue of the terms of said contract being referred to as a supplemental contract, intervenor herein became the guarantor of all payments provided for to be made by the settlers upon the Boise Project to the United States under and by virtue of said supplemental contract; that large sums of money under the terms of said contract have been collected from the various members of plaintiff herein for a drainage construction, and a large sum of which has been expended in the construction of drainage works.

IX.

That under and by virtue of the contract of June 1, 1915, Exhibit "A" to plaintiff's complaint, between the Nampa & Meridian Irrigation District and the United States of America, said Nampa Irrigation District contracted and agreed to pay the same maintenance and operation charge per acre as announced by the Secretary of the Interior for similar lands upon the Boise Project proper; that drainage is a proper and necessary maintenance charge in that a large acreage upon the Boise Project is rapidly becoming water-logged and seeped so that without drainage a large acreage of said Project will become permanently water-logged and seeped, and the productivity of the land destroyed, and that said seeped and water-logged land can not return to the Government of the United States a proper or any construction charge.

X.

That under and by virtue of said contract, Exhibit "A" to plaintiff's complaint, a large sum of money was charged against the Boise Project outside of the Nampa & Meridian Irrigation District, and for which lands outside of the Nampa & Meridian Irrigation District are paying and have been paying for drainage within the Nampa & Meridian Irrigation District.

XI.

That it is inequitable to permit the Nampa & Meridian Irrigation District to receive and retain such benefits to the expense of the Project lands outside of the Nampa & Meridian Irrigation District, which it is doing and has done, and avoid contribution to the expense of the drainage on Project lands outside of the said district.

XII.

That a large majority of the settlers, members of this intervenor, have executed the new form of water right application provided for in said supplemental contract between the United States of America and this intervenor, bearing date of the 12th day of July, 1921, wherein and whereby the members of this intervenor, relying upon the provisions of said contract to the effect that the United States of America would assess for drainage purposes all of the project lands within the Nampa & Meridian Irrigation District equally and ratably with that of the

lands outside of the irrigation district for drainage purposes belonging to the members of this intervenor, so executed said form of water right application in which it is provided, among other things, that the members of this intervenor would pay a drainage charge as levied by the Secretary of the Interior.

And for other and further defense to plaintiff's complaint, intervenor alleges and states:

I.

That plaintiff's complaint does not state facts sufficient to constitute a cause of action or to entitle plaintiff to equitable relief or any relief, and for that reason and upon that ground intervenor moves to dismiss plaintiff's complaint in said cause.

II.

That the United States of America is a necessary and indispensable party to this proceeding, in that by this action it is sought to abrogate a contract made with the United States of America, and is not a proceeding to prevent the violation of a contract made by the United States, and for that reason and upon that ground, intervenor further moves the Court to dismiss plaintiff's cause of action.

III.

That a copy of said supplemental contract, bearing date of the 12th day of July, 1921, between the United States of America and this intervenor,

marked Exhibit "B", is heretofore attached and made a part hereof; that said contract was made for and on behalf of the members of this plaintiff.

WHEREFORE, Intervenor prays judgment, that:

A. That plaintiff's cause of action be dismissed.

B. That intervenor have judgment for its costs in this behalf expended.

C. That intervenor have such other and further relief as may appear equitable and just in the premises.

ELDREDGE & MORGAN,
Attorneys for Intervenor.
Residing at Boise, Idaho.

(Duly verified)

*In the District Court of the United States, for the
District of Idaho, Southern Division.*

PAYETTE-BOISE WATER USERS' ASSO-
CIATION,

Plaintiff,

vs.

D. W. COLE, C. C. FISHER, CHAS. F.
WEINKAUF, RIVERSIDE IRRIGATION
DISTRICT, PIONEER IRRIGATION DIS-
TRICT AND NAMPA & MERIDIAN IRRI-
GATION DISTRICT,

Defendants.

STATEMENT OF COST AND CONDITIONAL
DEDICATION OF IRRIGATION WORKS,
BOISE IRRIGATION PROJECT, IDAHO.

To the Above Named Court:

The following statement of Cost and Conditional Dedication of Irrigation Works, in connection with the Boise Federal Irrigation Project, in Idaho, is presented for filing in the above-named case;

STATEMENT OF CASE.

Gross Cost:

Gross cost of construction of the
Project to June 30, 1919.....\$12,696,331.87

Note: This figure is taken from project books; in arriving at same, the cost of equipment and plant was not charged but depreciation only was charged. Receipts from sale and transfer of equipment in excess of appraised values at completion of work were credited to cost. A detailed statement of cost to June 30, 1917, has been furnished as Defendants' Exhibit No. 54. Any additional information desired in regard to items or feature costs may be ascertained by reference to the project books which have been offered in evidence and are available in the Boise Project office. The difference between the cost to June 30, 1917, as shown in Defendants' Exhibit No. 54 and the gross cost to June 30, 1919, as stated above, is nearly all covered by items, no part of which is charged to the project lands, *i. e.*, Riverside Drainage \$91,821.44 and Notus Canal \$121,523.44.

Equipment:

Add amount carried as value of
equipment undisposed of and adjustments on account of sales at less than
appraised value 35,816.69

\$12,732,148.56

Construction Credits:

Deduct construction credits, other than power receipts (power receipts are credited to the power plant which is reserved and is not charged to project lands)	725,424.59
	<hr/>
	\$12,006,723.97

Over-distribution operating accounts:

Deduct over-distribution on operating accounts	1,201.42
	<hr/>

Net construction cost.....	12,005,522.55
----------------------------	---------------

Surveys and investigations:

Deduct surveys and investigations on unconstructed units, itemized below	43,783.36
	<hr/>

\$11,961,739.19

Storage on Weiser River	\$ 918.96
Snake and Columbia Rivers	82.81
Reconnaissance on Wood River	168.95
Storage reconnaissance on Payette.....	267.44
Succor Creek reconnaissance	214.63
Miscellaneous preliminary expenses	188.30
North Side Boise surveys	5,494.15
Payette Unit surveys	10,600.23
Succor Creek tract surveys	1,080.15
Stream measurement Payette River	2,169.13
Stream measurement Succor Creek.....	1,097.89

Water filings, Pay-	
ette River	450.90

Subtotal	\$22,733.54
----------------	-------------

Surveys proposed ex-	
tensions on North	
and South Sides	
Boise River in 1916	21,049.82

	<u>\$43,783.36</u>
--	--------------------

Arrowrock Reservoir:

Cost of Arrowrock Reservoir.....	\$4,601,183.82
----------------------------------	----------------

Note: Difference between \$4,601,183.82 and \$4,750,000 referred to in public notice of July 2, 1917, is due to the fact that the equipment and construction plant were disposed of to better advantage than estimated at the time of public notice, and that the credit for certain construction earnings, such as profit on mercantile store and mess at Arrowrock has been transferred to the Arrowrock feature, making it possible to reduce the net cost of the reservoir to \$4,601,183.82.

Net cost, excluding Arrowrock Reservoir:

Net cost of project, excluding Ar-	
rowrock Reservoir	\$7,360,555.37

Drainage Construction:

Above figures include following items for drainage construction, part of which is chargeable to project land, and part paid by irrigation districts:

Pioneer Irrigation District.....	\$298,397.63
----------------------------------	--------------

Nampa & Meridian Irrigation District:

Old water right lands, \$151,206.38	
-------------------------------------	--

Project lands	158,139.56
---------------------	------------

	<u>\$309,345.94</u>
--	---------------------

Riverside Irrigation District.....	91,821.44
Drainage on project proper outside of districts, mainly Fargo Basin and Deer Flat.....	77,189.43

Subtotal drainage\$776,754.44

Note: Proportion of drainage construction to be charged to project lands consists of the \$77,189.43 drainage on project proper and the item of \$158,139.56 in the Nampa & Meridian Irrigation District, being the proportionate charge to project lands as agreed to in contract dated June 1, 1915 between the U. S. the Nampa & Meridian Irrigation District and the Payette-Boise Water Users' Association.

Total Drainage construction charged to
project lands\$235,328.99

Drainage cost to be collected from dis-
tricts and not charged to project lands:

Pioneer District.....	\$298,397.63
Nampa & Meridian District old lands.....	151,206.38
Riverside Irrigation District lands.....	91,821.44
Total drainage de- duction	\$541,425.45

\$6,819,129.92

Notus Canal:

Deduct cost of work on Notus Canal to July 1, 1919.....	121,523.44
--	------------

\$6,697,606.48

Power Plant:

Deduct value of power plant at Boise Diversion Dam reserved for pump- ing water to proposed extensions.....	195,305.27
---	------------

\$6,502,301.21

Deer Flat Reservoir:

Deduct 2% of Deer Flat Reservoir reserved to supplement water supply of Notus sub-unit extension, (2% about \$1,000,000) approximately	20,000.00
	<hr/>
	\$6,482,301.21

Main Canal:

Deduct 1% of cost of Main Canal from Boise River to Deer Flat Reservoir (1% of \$2,000,000) approximately	20,000.00
	<hr/>
	\$6,462,301.21

Suit in Court of Claims:

Add contingent liability in suit of Contractor in Court of Claims, Page and Brinton v. United States	325,931.97
	<hr/>

Net Cost, exclusive of Arrowrock Storage:

Net cost to be charged to project lands exclusive of Arrowrock storage.....	\$6,788,233.18
---	----------------

Irrigable Area:

Maximum possible irrigable area of new or project lands under the constructed unit, about.....	140,000 acres
--	---------------

Notes: The term "project lands" as used herein refers to lands under the constructed unit of the project and having no water rights from private canals, as distinguished from old water right lands having a partial water supply from private canals for which supplemental storage rights have been contracted under agreements between the various irrigation districts and canal companies, and the United States. Of the 140,000 acres of project land

above referred to, about 40,000 acres are located in the Nampa & Meridian Irrigation District, and about 400 acres in the Settlers' Irrigation District.

In the past year about 1500 acres of sandy, rough land have been deducted as not practicable for irrigation, also 1500 acres which have become seeped. The 140,000 acres referred to above includes about 8,000 acres of extremely rough, sandy land which it is doubtful whether it is practicable to irrigate, also a considerable area of land which will probably become non-irrigable on account of seepage, also lands held by owners not qualified to secure government water rights under the act on account of non-residence and excess ownership. Loss in acreage of from 10 to 25% on account of seepage has been common on other projects. How much of the seeped area can be reclaimed by drainage is uncertain. It is also uncertain whether any funds will be available for the construction of drainage works, and also as to the effectiveness of drainage works, when constructed and what lands will remain seeped after drainage construction.

Estimated acreage which will ultimately be found unsuitable for irrigation on account of the sandy and rough condition of certain lands and the seepage of other lands10,000 acres

Estimated net acreage of irrigable project lands under the canal system of the constructed unit.....130,000 acres

Cost per acre of works, other than Arrowrock reservoir, chargeable to project lands if payments are se-

cured from the entire 130,000 acres	\$ 52.22
50% of Arrowrock reservoir to be charged to project lands (50% of \$4,601,183.82) \$2,300,591.91 or a charge per acre, if payments are made from the entire 130,000 acres of	17.70
Charge per acre, provided all project lands are covered by contracts through organization of irrigation districts or otherwise, approximately	\$70.00

Explanatory Statement:

Unless irrigation districts or some form of organization capable of binding all the lands should be formed, it will be necessary to depend upon individual applications or contracts, the making of which is largely optional with the individual land owners. Without district organizations binding all lands, it is estimated that a considerable percentage of the land owners will avoid paying the government for a water right by picking up waste water, or securing water in some other way or holding the land for speculation without irrigation. Consequently, it is estimated that a charge of approximately \$70 per acre will be necessary if districts are organized and contracts made, binding all irrigable project lands to pay for a water right, and a charge of \$80 per acre without such organization. That is, it is estimated that a payment of \$70 per acre from all project lands guaranteed by an irrigation district having the taxing power en-

abling it to assess all the lands would bring in a total revenue or payment equal to the amount which would be collected by a charge of \$80 per acre upon such of the project lands as the owners thereof may elect to purchase water rights for.

Estimating the available capacity of Arrowrock Reservoir at about 268,000 acre-feet (approximately the amount of stored water drawn out of Arrowrock during the irrigation season of 1919), the storage capacity of Arrowrock Reservoir to be dedicated to the project lands of the constructed unit would be 134,000 acre-feet, and estimating that about $\frac{2}{3}$ of the 130,000 acres of project lands is located above Deer Flat Reservoir and will be supplied with water from Arrowrock Reservoir, and about $\frac{1}{3}$ is located below Deer Flat Reservoir and is supplied from Deer Flat Reservoir, the amount of Arrowrock storage capacity dedicated to the project lands supplied therefrom amounts to about $11\frac{1}{2}$ acre-feet per acre reservoir capacity, provided water rights are purchased for the entire area.

Approximately 58,000 acre-feet have been sold to supplement the water rights on the old lands of the Boise Valley under the canals of the several irrigation districts and companies with which contracts have been made, including the lands of the shareholders of the New York Canal Co. The balance amounting to about 76,000 acre-feet is reserved for future sales and proposed extensions of the project.

If the members of the Payette-Boise Water Users' Association desire a larger proportion of the Arrowrock Reservoir and are willing to pay for same, an application to purchase a right to the use of additional capacity out of the reservoir will be considered if an acceptable application for the same is made prior to the sale or dedication of the water to other lands.

The figure for cost in above statement includes a proportion of cost of detached or general office prorated to the various features on the basis of cost to each feature. The amount and details of such overhead cost to June 30, 1917, are shown in statement introduced in the trial of this case as Defendants' Exhibit 55. The cost of general offices is proportioned to all projects monthly by transfer, debiting all projects under way, and crediting the general office accounts. The basis of distribution is the ratio each project expenditure for the month bears to the total expenditure for the whole service for the same period. Secondary projects, or those on which investigations only are being made, received their proportion of overhead which remains a part of the cost of such investigations.

About three-fourths of the overhead cost of the Boise Project is charged to the portion of the works dedicated to the project lands of the constructed unit. The greater part of the overhead expense shown on Exhibit No. 55 is the expense of the

Boise Project office and consists of work done on the Boise Project directly and exclusively for the benefit of that project. The Supervising Engineer's office was also located on the Boise Project and handled engineering and supervisory work for that project. The Chicago office was a transportation and central purchasing office. Much of the time of that office was taken up in making purchases and forwarding shipments for the Boise Project. In 1915, the employment of Supervising Engineers was discontinued and thereafter the work previously handled by the Supervising Engineers was concentrated in the office of the Chief of Construction at the Denver office and is referred to in Exhibit No. 55 as the Denver Office Expense. The Washington office handled engineering, legal, clerical, accounting, correspondence, and general office work for each of the various projects of the Reclamation Service. The method of prorating the expenses of the detached offices at Washington, Denver and Chicago, to the several projects in proportion to the total expenditures of each project, was adopted as the most practical and economical method of distribution and one giving results not differing greatly from what would have been obtained by keeping track of the times of each employee devoted to each item of work for each of the several projects, the latter method, while possible, would have been very expensive and cumbersome. General administrative work carried on in the of-

office of the Secretary of the Interior has not been charged to any project.

CONDITIONAL DEDICATION OF IRRIGATION WORKS.

Subject to the payment of charges and compliance with regulations as required by law and authorized regulations of the Secretary of the Interior, and insofar as the dedication of irrigation works owned by the United States and not yet paid for by the Water Users is authorized by law, the following irrigation works are dedicated to the said project lands in the constructed unit, including the project lands in the Nampa & Meridian Irrigation District:

- (a) Right to the use of 50% of the storage capacity of Arrowrock Reservoir.
The said project lands to be entitled to 50% of the water actually available from said reservoir each year.
- (b) Right to the use of all of the distribution system, except the power plant and Notus Canal and 1% of the main canal.
- (c) Right to the use of 98% of storage capacity of Deer Flat Reservoir.
It is understood, however, that pursuant to the provisions of Sec. 6 of the Act of Aug. 13, 1914, (38 Stat., 686) no land owner or water user shall be entitled to receive water when in arrears for more than one year in the payment of any construction or operation and maintenance charge.

The said project lands of the constructed unit are not paying for any part of the 50% of Arrowrock Reservoir not dedicated to said project lands and shall have no right, title or interest to the said 50% or the water available therefrom, nor the 2% of the Deer Flat Reservoir reserved to supplement the supply of water for land under the Notus Canal.

The power plant at the Diversion Dam is reserved and not charged or dedicated to the project lands and the project lands shall have no interest therein.

Pursuant to Sec. 6 of the Reclamation Act of June 17, 1902, (32 Stat., 388), title to all irrigation works remains in the United States until further Act of Congress, and the management and operation of the irrigation works will remain in the United States until payments have been completed for the major portion of the lands irrigated by the waters of said works unless prior to said time the operation and maintenance thereof shall be turned over to the water users by the Secretary of the Interior pursuant to an agreement therefor under the provisions of Sec. 5 of the Act of Congress approved Aug. 13, 1914 (38 Stat., 686).

The right to enlarge any of the existing irrigation works of the project and to use or dispose of any additional capacity made available by any enlargement or improvement hereafter constructed by the United States is reserved.

Under the contract between the United States and the Pioneer Irrigation District the United States has the right to substitute water from Deer Flat Reservoir or other source of supply under the control of the United States in lieu of an equal amount of Arrowrock water to which the district is entitled. As there is more storage capacity in Deer Flat Reservoir in proportion to the acreage to be served than in Arrowrock Reservoir, such substitution may be desirable at times and the right to make such substitution is reserved. In the event of such use of Deer Flat water the Arrowrock water for which such Deer Flat water is substituted will be available for the project lands.

This dedication is made for the purpose of compliance with opinion and decision of the Court in the above entitled case, and should the said decision be reversed or modified by the final decision of the Supreme Court or Circuit Court of Appeals in said case, the Secretary of the Interior reserves the right to cancel or withdraw the said dedication and terminate all rights provided thereunder and in that event to proceed as may be lawful or proper in accordance with the determination of the Supreme Court or other appellate court rendering a final decision in said case.

Recommended for approval.

(Sgd.)

A. P. DAVIS,

*Director and Chief Engineer U. S.
Reclamation Service.*

APPROVED

Oct. 24, 1919.

(Sgd.) FRANKLIN K. LANE,

Secretary of the Interior.

(ORDER)

Approved with instructions to Clerk to incorporate in record on appeal.

FRANK S. DIETRICH,

Judge.

December 16, 1922.

Endorsed: Lodged Dec. 15, 1922.

Filed Dec. 16, 1922.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

PRAECIPE FOR TRANSCRIPT ON APPEAL.
To W. D. McReynolds, Clerk of the Above Entitled Court:

You will please prepare the record on the appeal of the Plaintiff and Appellant, Nampa & Meridian Irrigation District, taken in the above entitled cause from the decree and order made and entered in said cause on the 25th day of October, 1922, such record to consist of the pleadings, documents and papers in the following order:

1. Bill of Complaint.
2. Motion of Defendant to Dismiss Bill of Complaint.

3. Decision of the Court on Motion to Dismiss Complaint Filed August 22, 1922.

4. Decree of the Court Dismissing Complaint and Action Filed October 25, 1922.

5. All papers filed in connection with this appeal, viz: Petition for Appeal, Assignment of Errors, Order Allowing Appeal, Bond on Appeal, Citation, and this Praecipe.

In preparing the above record you will please omit the title of all pleadings except Bill of Complaint, but in lieu thereof insert the words "Title of Court and Cause," to be followed by the name of the pleading or instrument. You will also please omit the verification of all pleadings, but in lieu thereof insert, whenever the pleading is verified, the words, "Duly Verified."

We have conferred with counsel for appellees and he requests us to advise you that he waives the time allowed him in which to designate additional parts of the record for inclusion in the printed transcript, and consents that the same may be printed forthwith and in accordance with the foregoing Praecipe.

Dated this 27th day of November, 1922.

HUGH E. McELROY,

Solicitor for Complainant and Appellant.

Boise, Idaho, November 27, 1922.

We hereby acknowledge receipt and service of copies of the foregoing Praecipe for Transcript on

appeal and waive time to designate additional parts of the record for inclusion in the printed transcript and consent that the same may be printed forthwith and in accordance with the foregoing Praeceptum.

Dated this 27th day of November, 1922.

E. G. DAVIS,

B. E. STOUTEMYER,

Solicitors for the Defendant.

Boise, Idaho, November 28, 1922.

We hereby acknowledge receipt and service of the foregoing Praeceptum on Appeal by copy, reserving all rights as to time and to ask for further record.

ELDREDGE & MORGAN,

Solicitors for Intervenor.

Endorsed: Filed Dec. 4, 1922.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

CITATION.

THE UNITED STATES OF AMERICA,—ss.

To J. B. Bond, Project Manager of Boise Project of the United States Reclamation Service, Defendants, and Payette-Boise Water Users Association, Ltd., Intervenor:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, State of California, within

thirty (30) days from the date of this Writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States, District of Idaho, Southern Division, wherein Nampa & Meridian Irrigation District is Complainant and you, J. B. Bond, Project Manager of Boise Project of the United States Reclamation Service, are Defendant and Payette-Boise Water Users' Association, Ltd., is Intervenor, to show cause, if any there be, why the order and decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Frank S. Dietrich, United States District Judge for the District of Idaho, this 20th day of November, A. D. 1922, and of the Independence of the United States the one hundred and forty-sixth year.

FRANK S. DIETRICH,

ATTEST:

District Judge.

W. D. McREYNOLDS, Clerk.

(SEAL)

Service of the foregoing citation and receipt of copy thereof admitted this 28th day of November, 1922.

B. E. STOUTEMYER,

Solicitor for Defendant.

ELDREDGE & MORGAN,

Solicitors for Intervenor.

Endorsed: Filed Dec. 4, 1922.

W. D. McREYNOLDS, Clerk.

CLERK'S CERTIFICATE.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 122, inclusive, to be full, true and correct copies of pleadings and proceedings in the above entitled cause, and that the same, together constitute the transcript on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the Praecipes for such transcript and directed by order of the Court.

I further certify that the cost of the record herein amounts to the sum of \$141.25 and that the same has been paid by the appellant.

Witness my hand and the seal of said Court this third day of January, 1923.

W. D. McREYNOLDS,

(Seal)

Clerk.